No.

In the

Supreme Court of the United States

OCTOBER TERM, 1960

EX PARTE

JAMES PIERCE AND RAYMOND J. BEALL

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF TEXAS

L. N. D. WELLS, JR.,
1601 National Bankers
Life Bldg.,
Dallas 1, Texas,

BENJAMIN C. SIGAL,
1126 16th Street, N.W.,
Washington 6, D. C.,
Attorneys for Petitioners.

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	3-4
Statutes and Constitutional Provisions Involved	5
Statement of the Case	5
The Undisputed Facts	10
A. Service of the Restraining Order—Efforts to Interpret It	10
B. The Union Meeting	11
C. Plant Layout—Traffic Control	13
D. Picketing—October 17—Morning	15
E. Picketing—October 17—Afternoon	18
F. Conclusions as to the Facts	20
How Federal Questions Presented	21
Reasons for Granting the Writ	21
A. Pre-emption	21
B. Free Speech	24
C. Due Process	27
Conclusion	31

	Page
Temporary Restraining Order	A- 1
Affidavit of Contempt—Pierce	A- 8
Affidavit of Contempt—Beall	A-13
Response of Defendants to Notice and Affidavit for Contempt	A-19
Order Finding Beall in Contempt	A-27
Order Finding Pierece in Contempt	A-32
Petitions for Writs of Habeas Corpus	A-39
Opinion of the Supreme Court of Texas, January 11, 1961	A-46
Judgment of the Supreme Court of Texas, January 11, 1961	A-58
Motion for Rehearing Supreme Court of Texas	A-60
Order Overriding Motion for Rehearing, February 15, 1961	A-64

Page

Cafeteria Employees v. Angelos, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58 (1943) 24

Chauffeurs etc. v. Newell, d/b/a El Dorado Dairy, 356 U. S. 341, 78 S. Ct. 779, 2 L. Ed. 809 (1958) 24

Connally v. General Construction Co., 269 U. S. 385, 46 S. Ct. 126, 70 L. Ed 322 31

Deramus v. Thornton, 333 S. W. 2d 824 30

International Harvester Co. v. Kentucky, 234 U. S. 216, 34 S. Ct. 853, 58 L. Ed 1284 31

Lanzetta v. New Jersey, 306 U. S. 451; 59 S. Ct. 618; 83 L. Ed 888 31

Milk Wagon Drivers Union, etc. v. Meadowmoor Dairies, 312 U. S. 287, 61 S. Ct. 552, 132 A. L. R. 1200, 85 L. Ed. 836 10

Raley v. Ohio, 360 U. S. 423, 79 S. Ct. 1257, 3 L. Ed. 2d 1344 31

Swift & Co. v. United States, 196 U. S. 375, 25 S. Ct. 276; 49 L. Ed. 518 (1905) 30

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940) 24, 26

United States v. Cardiff, 344 U. S. 174, 73 S. Ct. 189, 97 L. Ed. 200 31

United States v. Cohen Grocery Co., 225 U. S. 81, 41 S. Ct. 298, 14 A. L. R. 1045, 65 L. Ed. 516 31

Winters v. New York, 333 U. S. 507, 68 S. Ct. 665, 92 L. Ed. 840 31

Youngdahl v. Rainfair, 355 U. S. 131, 2 L. Ed. 151, 78 S. Ct. 206 21, 22, 23, 24

Other Authorities

Labor Management Relations Act of 1947, 29 U. S. C. §151 et seq. 5, 24

Other Authorities—(Continued)

	Page
Labor Management Reporting and Disclosure Act of 1959, Title VII, P. L. 86-257, 86th Cong. 1st Sess., 73 Stat. 519	5
Texas Revised Civil Statutes, Article 6701(d), §§15, 77(a), 79, 92	26
United States Code, Title 28, §1257(3)	2
Vernon's Revised Civil Statutes, (Texas), Article 1911	9

No. .....

In the

Supreme Court of the United States

OCTOBER TERM, 1960

EX PARTE

JAMES PIERCE AND RAYMOND J. BEALL

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF TEXAS

JAMES PIERCE and RAYMOND J. BEALL, union representatives fined and jailed by the District Court of Smith County, Texas, for picketing the entrance to a manufacturing plant of General Electric Company in a manner considered by the state court violative of an *ex parte* labor injunction, pray that writs of certiorari issue to review the Judgment of the Supreme Court of Texas rendered January 11, 1961, remanding your petitioners to the custody of the Sheriff of Smith County, Texas, until released according to the terms of judgment of the trial court.

OPINIONS BELOW

The orders of the District Court of Smith County, Texas, jailing and fining petitioners are not reported. They are appended hereto at pp. A-27 ff; 32 ff.

The Opinion of the Supreme Court of Texas, rendered January 11, 1961, denying writs of habeas corpus and remanding relators to the custody of the Sheriff of Smith County, Texas appears at *342 S. W. 2d 429*. It is printed unofficially at 4 Tex. Sup. Ct. Jrnl. 202; and is appended hereto at p. A-46.

JURISDICTION

The Opinion and Judgment of the Supreme Court of Texas remanding petitioners to custody was entered January 11, 1961. Motion for rehearing was denied February 15, 1961.[1] The jurisdiction of this court is invoked under 28 U. S. C. §1257(3), inasmuch as the District Court of Smith County, Texas, and the Supreme Court of Texas have denied petitioners' claims of rights and immunities under the Constitution and statutes of the United States.

[1]Petitioners are presently at large on bond inasmuch as the Supreme Court of Texas, on February 22, 1961, granted their Motion to Stay Writ of Commitment pending final action on petition for writ of certiorari to the Supreme Court of the United States. Sup. Tr. 63.

QUESTIONS PRESENTED

STATEMENT

Petitioners, each bearing a picket sign which truthfully proclaimed the existence of a labor dispute, stationed themselves on the public way (the shoulder of a public highway) on either side of a private road entrance to the General Electric plant with which they were in dispute. Petitioners thereupon walked back and forth across the entrance, passing each other near the center of the entrance. There were only two pickets. Their pace was deliberate, usually resulting in only one of the several cars seeking to turn into the entrance passing before the picket reached the opposite curb, turned, and retraced his steps. The picketing thus delayed by several seconds each automobile seeking entrance, and was a factor in the line-up of some 25 or 30 cars seeking entrance to the plant, each of which was delayed while a picket walked across the entranceway in front of it. The picketing was entirely peaceful. There were no threats. No one was touched. All who desired to enter or leave the plant did so.

QUESTIONS 1 AND 2

1.

Is a state court's jurisdiction to punish for engaging in such picketing pre-empted by the Federal labor laws?

2.

Does jailing a citizen for engaging in such picketing violate rights of free speech guaranteed by the First and Fourteenth Amendments?

3.

STATEMENT

Petitioners were jailed for the acts above set forth, which the state courts have held violative of the following three paragraphs of a fourteen paragraph *ex parte* restraining order which forbade:

> "(1) Unlawfully obstructing the free ingress and egress of vehicles and persons into and from the premises of the General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed by the Defendants."
>
> "(2) Unlawfully delaying the entrances and exits of vehicles and persons into and from the premises of said General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas."
>
> "(7) Unlawfully obstructing the traffic on Highway 110 in front of the company's premises so as to create a menace and danger to the health and safety of citizens of this State traveling upon and using said State Highway 110."

The order to show cause why petitioners should not be held in contempt was in similar language.

QUESTION 3

Whether the above quoted language of the restraining order and the show cause order is so vague and undefined as to afford no fair warning of what conduct might transgress the commands of the order as to violate the due process guarantees of the Fourteenth Amendment.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The pre-emption issue (Question 1, *supra*) involves the Taft-Hartley, Labor Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U. S. C. §151 et seq., and Title VII of the Labor-Management Reporting and Disclosure Act of 1959; P. L. 86-257, 86th Cong. 1st Sess., 73 Stat. 519.

The Constitutional provisions involved are the First and Fourteenth Amendments.

STATEMENT OF THE CASE

During the course of a nationwide strike of General Electric plants which commenced October 2, 1960, the certified bargaining agent, Local 782 of the International Union of Electrical, Radio and Machine Workers, AFL-CIO, posted pickets at the entrance to the Tyler, Texas, General Electric Plant.

On October 14, 1960, during the course of the strike, General Electric presented its verified application for a temporary restraining order to the District Judge of Smith County, Texas, in chambers and without notice. The restraint issued *ex parte* (p. A-1, *infra*) in *haec verba* as sought by employer, prohibiting the International Union, its affiliated Local 782, twelve named individuals, and "all striking employees" from "placing vehicles so as to constitute an obstacle to the free ingress and egress of (sic) the

company's premises * * * striking or hitting with picket signs or other objects carried by the pickets, vehicles entering and leaving the company premises * * * threatening violence * * *provoking violence * * * harassing and intimidating employees * * * picketing or attempting to picket homes or private residences of the working employees * * * threatening or coercing working employees * * * by telephonic communication * * *. In any manner unlawfully interfering with the normal operation of the company's properties and in the conduct of its business * * *. Committing acts of destruction or in any manner damaging any of the vehicles entering or leaving the premises * * * molesting, intimidating, threatening or inflicting physical violence * * * etc."

In addition to the proscriptions above summarized, the restraining order in paragraphs (1), (2), and (7) forbade the following acts:

> "(1) Unlawfully obstructing the free ingress and egress of vehicles and persons into and from the premises of the General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed by the Defendants.
>
> "(2) Unlawfully delaying the entrances and exits of vehicles and persons into and from the premises of said General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas.
>
> "(7) Unlawfully obstructing the traffic on High way 110 in front of the company's premises so as to

create a menace and danger to the health and safety of citizens of this State traveling upon and using State Highway 110."

On October 19, 1960, employer's plant manager filed two affidavits for contempt (p. A-8; A-13, *infra)* charging that Pierce and Beall were each guilty of contempt in that (Tr. 46; 51-52)[2]:

"(1) He did on October 17, 1960, unlawfully obstruct the free ingress and egress of vehicles and persons into and from the premises of General Electric Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed;

"(2) He did on October 17, 1960, unlawfully delay the entrances and exits of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas;

"(3) He did on October 17, 1960, obstruct and attempt to obstruct the free use of the streets and highway adjacent to the Company's place of business and he did obstruct the free ingress and egress to and from the Company's premises;

"(4) He did on October 17, 1960, unlawfully obstruct the traffic on State Highway 110 in front of the Company's premises so as to create a menace and danger to the health and safety of the citizens of this State traveling upon and using State Highway 110;"[3]

[2]The following references are used throughout this Petition: "Tr." is the Transcript of the pleading in the District Court (original on file here pursuant to order of Court); "S. F." is the Statement of Facts which reports the testimony in the District Court. "Sup. Tr." is the Transcript of the Record certified by the Clerk of the Supreme Court of Texas.

Relators filed answers denying contempt, challenging the state court's jurisdiction as pre-empted by federal labor statutes, asserting that the activities of which they were charged were peaceful picketing protected by constitutional guarantees, and challenging the restraining order and contempt charge for ambiguity (p. A-19). The further defense was interposed (pp. A-24-25):

> "These defendants interpreted said order to permit peaceful picketing on the public way at the point where the private driveway into plaintiff's plant intersects with State Highway 110. These defendants picketed on October 17, 1960, on the public way adjacent to the entrance of plaintiff's plant and across the intersection of the highway and the drive into plaintiff's plant. Neither defendant picketed across the highway. All picketing was on that part of the highway which constituted the shoulder of the highway and across the entrance to plaintiff's plant. These defendants continued walking across such entrance in an orderly and peaceful manner carrying picket sign advertising the facts of the labor dispute. Such picketing in some instances delayed individual automobiles' ingress and egress from the plaintiff's plant as much as ten or fifteen seconds while the picket walked in front of said vehicle. Such delay is not unreasonable. Indeed, defendants have constitutional rights to picket which they exercised without intention to violate the orders of the Court, and these defendants believed that in said picketing and in all their activities that they were acting within their rights and in accordance with the orders of this Court and these defendants had no intention of violating the orders of this Court."

---

[3]This paragraph was included only in the notice relating to Pierce. Tr. 52.

After trial to the judge, without the intervention of a jury,[4] the state district court found both Pierce and Beall guilty of contempt, viz (Tr. 77 as to Beall; Tr. 83-84 as to Pierce):

> "(1) He did on October 17, 1960, unlawfully obstruct the free ingress and egress of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises then picketed:
>
> "(2) He did on October 17, 1960, unlawfully delay the entrances and exits of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas;
>
> "(3) He did on October 17, 1960, obstruct and attempt to obstruct the free use of the streets and highway adjacent to the Company's place of business and he did obstruct the free ingress and egress to and from the Company's premises;
>
> "(4) He did on October 17, 1960, unlawfully obstruct the traffic on State Highway 110 in front of the Company's premises so as to create a menace and danger to the health and safety of the citizens of this State traveling upon and using State Highway 110."[5]

On the basis of the above conclusions the District Judge imposed a three day jail term on Pierce, a two day jail term on Beall and fined each $100.00, the maximum permitted by Article 1911, V.R.C.S., which empowers a Texas Court to punish for contempt "by a fine not exceeding $100.00 and by imprisonment not exceeding three days."

---

[4]Under Texas procedure those charged with contempt are not entitled to jury trial. See 12 Tex. Jur. 2d 527; "Contempt", § 49 and cases there cited.

[5]Paragraph 4 is contained only in the order as to Pierce. (Tr. 84.)

Upon being jailed, relators presented Ex Parte Application for Writs of Habeas Corpus to the Supreme Court of Texas. These were provisionally granted, but upon final hearing were denied by Opinion dated January 11, 1961, reported at 342 S. W. 2d 424, pp. A-46—A-57, infra.

The Undisputed Facts

The Opinion of the Supreme Court of Texas does not fully state the facts. Our claims to constitutional right have been denied by recitals of half-fact, quotations of testimony out of context, and failure to note undisputed fact and admissions made by adverse witnesses (p. A-46 at A-54 ff, *infra*). Accordingly, we respectfully call upon this Court to exercise its "power to search the records in the state court • • •" for "• • • it is of prime importance that no constitutional freedom • • • be defeated by insubstantial findings of fact screening reality." *Milk Wagon Drivers Union, etc. v. Meadowmoor Dairies, 312 U. S. 287, 293.* When the undisputed relevant facts are noted the following appears:

A.

Service of the Restraining Order—Efforts to Interpret It

The restraining order was served on Beall (the officer of Local 782), S. F. 219ff. while Pierce (the International Union representative) was at General Electric headquarters in the East trying to settle the strike, S. F. 226. Beall confessed to being "a little frightened" by the order which he did not understand (S. F. 272). So he sought help; his long

distance call to the president of the Texas AFL-CIO resulted in recommendation of counsel in Dallas. Pierce and other union officers came that night to Dallas where they consulted counsel (S. F. 228ff.) and asked "what we could and could not do under this Restraining Order" (S. F. 229). They were advised that the restraint did not forbid picketing, but as to the manner of it to recheck with the Sheriff and highway patrolman, and to follow whatever advice or instruction the peace officers gave (S. F. 229). Pierce did so. Cars were parked at points as directed by highway patrolmen. Picketing was continued in the view of eleven highway patrolmen who were present in front of the plant (S. F. 229ff; 238ff.). No one suggested that the picketing was being improperly conducted (S. F. 239; 44; 52; 63).

B.

The Union Meeting

The Texas court's opinion infers contumacious intent from statements attributed to relators at a union meeting held immediately prior to the questioned picketing (p. A-56, *infra*). But the undisputed evidence, ignored below, shows the following with respect to that meeting:

A union rally (which had been scheduled long before the restraint issued, S. F. 271) was held on a vacant lot owned by the union which is located across the highway and about one quarter of a mile south of the General Electric plant. In the course of this rally Pierce spoke several times explaining the restraining order, branding the procedure of its issuance one-sided and unfair, and expressing his pique

at the issuance of the order without notice and without so much as a check with peace officers who could have vouched for the peaceful and lawful nature of the picketing. S. F. 232ff; 257ff. The meeting otherwise consisted of addresses by representatives of other labor organizations expressing their support of the strikers (S. F. 185, 234). Pierce made clear that although he thought the restraint improperly issued, *it had to be obeyed* (S. F. 234, 264; 314). Pierce was specific in his advice; S. F. 264:

> "A. I told those people that that should be obeyed at all cost.
>
> "Q. Did you go on and expand or explain that at all? And if you did, please tell the Court what you said about it.
>
> "A. Yes, sir, I said that we should go strictly by the Restraining Order, that we should go out of our way to see that nothing happened. I told them that if a person were to walk up and hit them in the face on the picket line, that they should stand there and not lift a hand * * *."

Employer's witness, Connor, while asserting that Pierce referred to the Court's Order as "a piece of trash", and the judge as "bought and paid for by General Electric" (S. F. 25), admitted that Pierce "*admonished the crowd to obey the fourteen points in the restraining order*" (S. F. 314). (Emphasis added.)

The meeting ended with Pierce's statement that he was going to picket lawfully (S. F. 334, 335). He proceeded with James Smith, a representative of the Steelworkers union from Longview, to the entrance to the G. E. property and commenced picketing. S. F. 187-188; 236ff.

C.

The Plant Layout—General Electric Activities—Highway Patrol, Traffic Control

Before detailing the manner of the picketing, we describe the context in which it was conducted. The General Electric plant property is on the north side of State Highway 110, several miles east of Tyler. The plant is far enough out of the populated city area that all employees drive, rather than walk, to work. A plat of the property is in evidence, Exhibit 2, S. F. 339. The highway right-of-way is 130 feet wide, the pavement 40 feet wide. The plant is reached by employees from Tyler by driving their automobiles in an easterly direction on Highway 110, then turning left across on-coming traffic, and proceeding north on the 22-foot wide private driveway of the Company. A lesser number of employees drive from the east to the west, i.e. from Whitehouse or Troup, and turn right onto the G. E. driveway without crossing the oncoming lane of traffic. S. F. 42ff.

There are two gates or entrances into the G. E. property. Only one is normally kept unlocked. General Electric made no effort to use the second gate, because Austin, Manager of Employee and Community Relations, explained that they did not want to give the employees a second place to picket. S. F. 312, 313.

Not only did G. E. fail to open the other available gate, but more important, it took steps clearly calculated to assure a traffic pileup at the single open entrance. The conventional reporting time of employees is staggered, begin-

ning at 7:00 A.M. and ending at 8:00 A.M. But General Electric, on the day it obtained the *ex parte* order, notified all employees that as of October 17, all employees were to report at 8:00 A.M. S. F. 72-73, 113; 167ff. Thus the 250 office and non-striking production employees, plus supervisors and executives, all converged on the plant at 8:00 A. M. By far the greatest number of these were coming from Tyler, and thus were required to turn left across the highway.[6] Of course both common prudence and the law of the road required these vehicles to stop before entering the G. E. drive.[7] S. F. 43.

Such congestion at a single gate was sure to clog traffic. It did so.[8] But, fortunately, Pierce had previously conferred with highway patrol officers and the sheriff,[9] S. F. 218, and as a result, there were eleven highway patrolmen in the area. When traffic became heavy, high-

[6]Plaintiff's property boundary marker as originally placed would have required pickets, if they were to remain on *public* property, to picket almost on Highway 110. But Pierce, after ascertaining the 30-foot highway right-of-way, carefully measured 65 feet north from the center of the highway and marked this point on the G.E. driveway. By remaining close to this mark pickets were about 1½ to 2 car lengths further from the highway traffic than they would have been had they observed the original, improperly located, company marker. Thus the point at which pickets stationed themselves resulted in less likelihood of slowing traffic than if they had located in relation to the employer's marker. S. F.—

[7]Note that according to Beall's undenied testimony there is a traffic clog even when employees report at staggered shifts and there is no picketing. S. F. 41; 295-296; Cf. Sproule 170. Thus the day of the contempt hearing (after the strike was over and the picketing had ended) there was a twelve-car traffic jam at the plant entrance at reporting time.

[8]On the morning of October 17, the G.E. movies show six cars backed up toward Tyler to the point that the patrolmen began directing traffic, and 12 to 24 cars waiting thereafter. (Ex. 11) Cf. S. F. 192; 189; 38; 45.

[9]We are unable to specify by record reference what occurred between Pierce and the highway patrolman because the trial court would not hear it. S. F. 218; compare 266-267.

way patrolmen commenced directing the traffic by hand signal, S. F. 189, in a manner similar to that by which traffic is directed after any large social or sports event which overtaxes the highway facilities. S. F. 43-44.

It was in this context that the alleged contemptuous picketing took place.

D.

The Picketing—October 17—Morning

Upon leaving the union meeting at about 7:15, the morning of October 17, Relator Pierce and Jim Smith proceeded to the north shoulder of the public highway #110 at the intersection of the G. E. driveway, and thereupon commenced picketing. The picket signs were 16 x 24 inches reading:

"Local 782, IUE-AFL-CIO
ON STRIKE
against General Electric"

Each picket (there were only two), starting from the driveway curb and crossing the other picket in mid driveway, proceeded to the opposite driveway curb. Having reached the other curb, each picket turned and reversed his direction. Admittedly the picketing was at a deliberate pace (S. F. 63)—no effort was made to hurry—although pickets did observe and follow hand signals indicated by the highway patrolmen who were directing traffic (S. F. 239). Although plaintiff took ten thousand feet of movie film, and introduced 1000 of this in evidence (Exhibit 11), there is no showing of a single instance where a picket failed to obey

a signal by a patrolman directing traffic.[10] No threats were made. No violence occurred. Not a finger was laid on anyone. There was not even conversation between pickets and those crossing the picket line. As every plaintiff witness admitted, "everyone who desired to enter the plant did so." (S. F. 73). Plaintiff's own witnesses characterized the picketing as "orderly and pleasant" (S. F. 31). Police officer Nolan, plaintiff's witness, observed the picketing to be "peaceable". S. F. 40. The following is officer Nolan's description of the picketing:

"Q. Now, what were the pickets doing?

"A. They were walking in this area right across here.

"Q. Walking across five or six feet north of the stop sign, walking across the driveway, and then back across again? Is that correct?

"A. Correct.

"Q. Did they ever, to your observation, stop in front of a vehicle?

"A. No, sir.

"Q. They kept walking all of the time?

"A. Yes, sir.

"Q. How many of them were there?

"A. There were two.

"Q. Only two at a time?

"A. Yes, sir."

[10] Plant Manager Sproule's assertions of such failures not only lacked specificity (S. F. 176-177), but were belied by plaintiff's own movies. See Exhibit 11.

Plaintiff's witness, Patrolman Arnold, testified; S. F. 62-64:

"Q. Now, was everybody orderly there as far as you observed?

"A. Who are you speaking of?

"Q. Anybody. Did you see anybody make any threats or any ugly gestures or talk mean to anybody, or lay a finger on anybody, or anything like that?

"A. No, sir.

"Q. And they walked from one side of the driveway to the other?

"A. Yes, sir.

"Q. And as they would get to one side of the driveway, a car would come through, or perhaps two cars, and then they would walk back the other way and another car would perhaps be held up for a few seconds?

"A. Yes, sir.

"Q. Did anything more than that happen? If it did, tell the Judge about it.

"A. Well, our main concern was the traffic problem, and the pickets walked so slow in front of the cars that it allowed the cars to stack up on the highway.

"Q. Did you ask the pickets to walk any faster?

"A. No, sir, I did not.

"Q. As a matter of fact, the only traffic control that you exercised was to hold the traffic coming in a westerly direction from Troup, or what's that other town—Whitehouse, from Troup or Whitehouse coming back toward Tyler, isn't that right?

"A. Yes, sir.

"Q. And when you held that traffic long enough for cars to turn left into the plant, the thing worked itself out very promptly, did it not?

"A. Yes, sir.

"Q. Was anybody even late to work that morning?

"A. I don't know.

"Q. If they were, they didn't make any complaints to the Highway Patrol about it?

"A. Not to my knowledge."

Even with the intentionally compounded delay flowing from G. E.'s change of staggered shifts to a single reporting time, and despite failure to open a second available gate, the more than 300 employees reported for work. As all admit: every person who desired to enter the plant did so (S. F. 32; 44-5; 64; 73; 117.)

E.

The October 17, Picketing—Afternoon

Shortly after 4:00 P.M., Relators Pierce and Beall commenced picketing in similar fashion to the morning picketing. Traffic leaving the plant is controlled by a "Stop" sign requiring all traffic to stop before it enters highway 110. Normally all employees have left the plant by seventeen minutes after the hour. S. F. 305. On this occasion, with all employees off at one time instead of the usual staggered quitting time, it was not until 35 to 40 minutes after quitting time that all employees had left (S. F. 308). Some of this delay was due to the longer drive required to exit from

the more distant parking facilities which the company required during the strike, S. F. 308, and Defendants' Ex. #2.

As in the morning picketing there was neither threat nor violence. Pickets were polite to those who crossed their line. S. F. 111, 133. There was some jocular banter between pickets and those who drove past. S. F. 240; 274-5. Pierce and Beall crossed the driveway at a deliberate pace, though on two or three occasions Beall reversed his direction prior to reaching opposite curb, and on one occasion reversed his direction twice.[11] Employer's movies make quite clear that there was a good deal of good natured kidding in connection with the afternoon picketing, bowing to the occupants of automobiles—sometimes in a somewhat mock grandiose fashion—and smiling and talking back and forth. The motion pictures indicate that all this was done (and taken by the occupants of the cars) in good humor, almost in holiday festive manner. This picketing continued for less than an hour (S. F. 273), after which other pickets relieved Pierce and Beall. Neither General Electric, nor peace officers, nor anyone else made any complaint to the pickets or the Union officials as to the picket's conduct. S. F. 44, 191, 211, 269, 238-242; Cf. S. F. 77; 97-98.

Picketing continued under surveillance of both company officials and peace officers without complaint until October 19, 1960 when the contempt affidavits were filed.

[11]The movies, which admittedly record the most gross delays (S. F. 157), also show that on two occasions Beall stopped and reached to rub his leg while in mid-driveway, and on one occasion dropped his picket sign. Pierce partially dropped his sign, but recovered it immediately and did not stop or reverse direction. See movie film, Exhibit 11.

F.

CONCLUSIONS AS TO THE FACTS

The Texas Courts have held that the record disclosing the above events shows unlawful obstruction, unlawful delay, unlawful obstruction of traffic. (A-30; A-35; A-51, *infra)*. We have set forth the facts as shown by the whole record at such length so that this Court could see that the *ONLY DELAY OR OBSTRUCTION IS THAT INCIDENT TO THE PEACEFUL PICKETING AT A DELIBERATE PACE ON THE PUBLIC WAY ACROSS THE ENTRANCE TO THE STRUCK PLANT.* The pickets, by effecting a deliberate pace, walked in front of each car entering the plant. As the Texas Supreme Court noted: (A-54, *infra*):

> "There is testimony that the pace of Pierce and the other moving picket was so slow and deliberate as to back up some 25 or 30 automobiles approaching from Tyler and intending to enter the plant premises; that the interval between the crossing of the pickets and their return was so brief that only one automobile could pass; that highway patrolmen were forced to hold up traffic traveling in a westerly direction to permit turning of the slow-moving traffic across the north lane of the highway and into the plant entrance; that 'the traffic coming from Tyler was blocked considerably'; that there was a similar slowdown of automobiles leaving the plant at the end of the work day; that 'the vehicles were held up repeatedly, both before and after 8:00 A.M.'"

The only obstruction or delaying at issue is that which is incident to pickets walking in front of a car entering a struck plant. As we develop *infra*, p. 24-27, we assert that

the right-to-picket encompasses the right to have the public read and understand the picket sign, and that the few seconds delay required for a picket to interpose a picket sign in front of each car entering a struck plant is not unlawful delay or obstruction, but is a lawful and necessary concommitant of the right of publication.

How Federal Questions Presented

Each of the federal questions (pre-emption, free speech, and denial of due process) was raised in the trial court by "Defendants' Response to Show Cause Order, Tr. 54; and Response of Defendants to Notice and Affidavit for Contempt, Tr. 70. The same issues were raised in the Petition for Writs of Habeas Corpus addressed to the Texas Supreme Court (p. A-39 at 42; 43, *infra*).

The Opinion of the Supreme Court of Texas shows on its face that these federal questions were considered by that Court. (See pp. A-46 at 48; 51; 52, *infra*).

Each of these questions was reurged in Motion for Rehearing in the Supreme Court of Texas, p. A-61-63, *infra*).

REASONS FOR GRANTING THE WRIT

A.

Pre-emption

The Supreme Court of Texas has decided a federal question (pre-emption) in conflict with application decisions of this Court, particularly *Youngdahl v. Rainfair, 355 U. S. 131, 2 L. Ed. 151, 78 S. Ct. 206. Youngdahl* forbade a state court to enjoin peaceful picketing. The instant

case jails relators for performing the very acts which this Court in *Youngdahl* held were not subject to state restraint.

We do not urge preemption of the restraint as written insofar as it specifically enjoins threats, violence or other matters within state competence (p. 6, *supra*). The attack is upon the restraint *as interpreted and applied in the contempt proceeding*. The restraining order by its terms does not ban picketing. It was admitted that picketing was not prohibited.[12] Paragraph (5) of the restraint, by its proscription against "more than two (2) pickets at any time within 50 feet of an entrance * * *" implies the propriety of two or less pickets. Thus in banning the illicit, while preserving the right to picket, the restraining order did exactly what this Court in *Youngdahl* indicated was as much as a state court could do, viz: "the state court was within its discretionary power in enjoining future acts of violence, intimidation and threats of violence by the strikers and the union." *355 U.S. at 139*. Yet this Court was there at pains to hold: "Though the state court was within its discretionary power in enjoining future acts of violence, intimidation and threats of violence by the strikers, and the union, *yet it*

[12]Plaintiff's attorney repeatedly advised the trial court: "* * * *we have certainly never denied the right to peacefully picket. That is not an issue in this case at all.*" S. F. 217. The order does not *per se* restrain picketing. The only "obstruction" proscribed is that which is done "unlawfully." Plaintiff recognized that "the picket had the same right to use the street as the General Electric Company had" S. F. 175; and reiterated that union members had a right to carry a sign, and plaintiff had no "objection to anyone picketing." Relators were assured in the course of the trial that they were not charged with the act of picketing as constituting a contempt of court, viz: (S. F. 33)

"MR. WELLS: Do you mean, Counsel, that you are charging that the act of picketing constitutes contempt of this Court?

"MR. FLOCK: No, sir."

is equally clear that such court entered the pre-empted domain of the National Labor Relations Board insofar as it enjoined peaceful picketing by petitioners. 355 U. S. at 139; 2 L. Ed. at 157.

The Texas' Court's twisting of an order which permitted peaceful picketing into proscription of picketing is an unlawful state invasion of the federal domain. *Youngdahl* specifically so held. What the Texas courts have done is to twist the restraint which, as issued, conformed to this Court's *Youngdahl* rule, and to "interpret" the order to do just exactly what this court in *Youngdahl* held to be beyond a state court's power. There the Arkansas Supreme Court had prohibited all picketing, *226 Ark. 80, 288 S. W. 2d 589.* But this Court vacated the injunction insofar as it forbade peaceful picketing, viz: "* * * to the extent the injunction prohibits all other picketing and patrolling of respondent's premises and in particular prohibits peaceful picketing, *it is set aside. 355 U. S. at 140; 2 L. Ed. at 157.* Emphasis added.

The Texas Court's opinion thus turns *Youngdahl* upside down and backwards when it states that *Youngdahl* authorizes the instant restraint. Actually, it holds the exact contrary.

On this contempt proceeding there is no evidence of violation of those portions of the restraint with respect to violence or other matters within state competence under the *Youngdahl* decision, except that peaceful picketing (an activity which is protected by Section 7 of the Federal Labor Management Relations Act and which the state has

no power to ban) resulted in some delay of ingress and egress, and to some obstruction of the entrance. But an order which bans "obstruction" while permitting peaceful picketing, necessarily implies that obstruction which flows from picketing is not banned. While the Texas court recognized as much when issuing the initial restraint (for it banned only "unlawful" obstruction) on contempt it otherwise construed its powers to ban all obstruction—even that incident to lawful picketing. So construed the order is beyond the power of the state court, for the federal statute protects as a lawful "concerted activity" the peaceful picketing here shown. *Youngdahl, supra* and Section 7 of the federal labor law, *29 U. S. C., §157.*

B.

Free Speech

Punishment of union member for peaceful and truthful publication of the facts of a labor dispute by means of peaceful picketing unaccompanied by violence or threat, (and in circumstances where all who wish to enter the struck premises do so) is violative of First and Fourteenth Amendments rights. *Thornhill v. Alabama, 310 U. S. 88; 60 S. Ct. 736; 84 L. Ed. 1093 (1940); Chauffeurs etc. v. Newell, d/b/a El Dorado Dairy, 356 U. S. 341, 78 S. Ct. 779, 2 L. Ed. 809 (1958).*

Here, as in *Cafeteria Employees v. Angelos, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58 (1943)* "Right to free speech • • • cannot be forfeited because of disassociated acts of past violence (citing cases). Still less can the right

to picket itself be taken away merely because there may have been isolated incidents of abuse falling far short of violence occurring in the course of that picketing."

Nor is it basis for jailing a citizen that his picketing was "slow and deliberate" or that "the interval between the crossing of the pickets and their return was so brief that only one automobile could pass (at a time)" and a resulting "slow down of automobiles" entering or leaving. (*342 S. W. 2d at 429*, p. A-54-55, *infra*).

The courts below, while ostensibly recognizing the right to picket, hold that when its exercise delays those who observe the picket sign it becomes unlawful. This view obliterates the right to picket. For either the physical presence of the picket, or the delay inherent in the viewers stopping to read the sign requires some interruptions of normal movement. When a delay of the ten seconds or so required for each entrant to a gate to view the sign is multiplied in a context of many cars funneled through a single gate it may well result in a delay of several minutes, or a line of cars which is normally twelve to fifteen may extend to twenty-five or thirty.

But if the right to picket may be limited because it takes a few seconds for auditors to get the message, then there is no right to picket. Speech is more than talk in a vacuum. Speech is nothing unless it means some reasonable opportunity for auditors to hear. The broadcast of a picket's message is nothing unless it includes a reasonable opportunity for the public to view the message.

This Court in *Thornhill* recognized "that effective exercise of the means of advancing public knowledge may persuade some of those reached * * *." *310 U. S. 88, 104.* Yet it was the *effective exercise* of the right which was held protected by the constitution. Here the "effective exercise" by workers in communicating a lawful message has resulted in jail and money fine.

Pickets and non-strikers, motorists and pedestrians, all have rights to use the public way. A state may provide rules for accommodation of the various uses to which these may put the public road. But a state may not, as here, deny the use of public way to a particular class (pickets) on the ground that their use of the road interferes with others' use. For any lawful use constitutes some deprivation of right of conflicting use. That is the reason for traffic lights, cross-walks, and other means of accommodation of the many who use the public way. Pickets have just as much right to parade with signs on the public road as do General Electric executives and non-strikers to drive their vehicles upon it. Pickets, as pedestrians, have rights vis-a-vis motorists.[13] Right-of-way is controlled either by position in cross-walk, or, as here, by traffic control exercised by state highway patrolmen directing traffic. Obedient to this traffic control, the pickets enjoyed the privileged position of right-of-way vis-a-vis drivers of motor vehicles. Lawfully on the public way—they had the right to carry banners, and to interpose them before

[13] Cf. Article 6701(d), Tex. Rev. Civ. Stats., particularly at §§15; 77(a); 79; 92.

those who entered. The delay incident to receiving this message is no basis for punishment.

If the punishment here is permitted to stand every picket in America is vulnerable. For delay is inherent in observing and reading a picket sign—perhaps even in deciding whether to be influenced by it. If Pierce and Beall may be jailed for causing delay, every picket is in jeopardy, and the right to picket is gone.

C.

Due Process

Restraint against "unlawfully delaying * * *" and "unlawfully obstructing * * *" is so vague as to be beyond common understanding, and this denies due process. Particularly in the context of the instant order which enjoined "striking and hitting * * * vehicles entering and leaving * * *; threatening violence * * * etc." (see p. 6, *supra*), and limited pickets to not more than two within a specified area,[14] it would appear that peaceful picketing was not banned. General Electric's counsel so conceded, p. 22, *supra*. Yet the contempt charge and finding result in fine and jail term solely because of picketing which the state courts hold to have violated proscriptions against "unlawfully delaying" and "unlawfully obstructing."

[14]Paragraph 5 of the Restraining Order forbade:
"(5) Unlawfully placing more than two (2) pickets at any time within fifty (50) feet of an entrance to the Company's premises or placing more than two (2) pickets within fifty (50) feet of other pickets.

The General Electric management did not itself understand the restraint it had induced the Court to issue.[15]

---

[15]Plant Manager Sproule admitted as much, viz. S. F. 179ff:

"Q. Did you read the Application for Restraining Order before you signed it?

"A. Yes, sir.

"Q. You understood that you were asking for some kind of a limitation on the actions of various members of the Union?

"A. Yes, sir.

"Q. Now, with respect to pickets, did you understand that from your reading and knowledge of that document, that you were in any wise restricting the right of those persons picketing?

"A. No, sir.

"Q. And as long as they kept moving on the public way with the signs, you had no intention of impeding them from doing that in any way?

"A. Yes, sir.

"Q. Oh, you did?

"A. Yes, sir.

"Q. Well perhaps I don't understand that.

"A. Perhaps I didn't understand the question, sir.

"Q. Did you have an intention of moving pickets off of a public way?

"A. No, sir.

"Q. Did you have any intention in obtaining this restraining order in requiring pickets to be on the public way only at particular times?

"A. No, sir.

"Q. Well, is it a matter then of pickets not walking fast enough, or walking in the wrong place, or what is it in your view, that is restrained with respect to the pickets?

"A. You asked the questions as to whether I thought lawful picketing consisted of a man keeping moving. I think it consists—and this is Sproule opinion now—this is not law opinion, I assure you. Sproule opinion means that a man has to do more than move at a snail's pace to do lawful picketing. That is my view.

"Q. As I understand your position then, it is that the pickets should move faster than the picket moved?

"A. Well, I don't feel that I am capable of interpreting the law. I gave you my interpretation.

"Q. Well, you obtained a Restraining Order here which you are requiring certain of your employees to interpret. What I am trying to discover is what the draftsman of the request, how it is interpreted by the person who made the request. You are the person who signed the Application for a Restraining Order, as this record shows.

"MR. ELOCK: Your Honor, the Injunction speaks for itself.

"THE COURT: Yes, I will rule that the Restraining Order does speak for itself. His interpretation would cast no light on the legality or what it means. I will sustain the objection.

"MR. WELLS: Note our exception, Your Honor.

(Continued on next page)

It would appear from the face of the restraint that the district court was permitting "obstructing" and "delaying" to some extent, so long as such conduct was not "unlawful". But pickets, at their peril, were forced to determine the standard of "lawfulness" applicable, because the court had not given any guidelines to indicate the exact conduct proscribed.

Pickets were left to speculation and conjecture as to what delay was "unlawful". How many seconds must a car be delayed by pickets who are peacefully crossing the public way before there is an "unlawful" obstruction or delay? Is compliance by pickets with all instructions of a traffic officer present at the picket line sufficient to render delays incidental to deliberate and peaceful picketing lawful? What pace is required? May pickets cross the roadway, or must they stand at its side, hoping that a sideway glance may result in those who are entering getting their message. In the course of a day's picketing the record shows that on *two* occasions Beall stopped and reached to rub his leg while in mid-driveway, and on one occasion dropped his picket sign, and immediately picked it up. How was he to know such activity would subject him to jail and money fine?

(Continued from preceding page)

"Q. Did you time any particular cars in or out of the premises of the Company on the 17th?

"A. No, sir.

"Q. Your Affidavit in Contempt speaks of that he did 'Unlawfully delay'. I take it you are not in position to tell the Court what you meant by unlawfully delay there, whether five seconds or a minute or an hour?

"A. No, sir.

"Q. If I understand your testimony now, your only complaint with reference to peaceful picketing was that it was conducted at too slow a pace. Is that correct?

"A. I don't feel I am capable of interpreting all of the laws of the State of Texas. I thought that there was a violation of the picketing laws, and therefore I filed a Complaint."

Many more such queries arise from the broad, vague and ambiguous language of the order. Injunction against unlawful obstruction leaves the door open for controversy, both as to what is obstruction and as to what is unlawful. Defendants are left to guess at what they are forbidden to do.[16]

The Supreme Court of Texas, while citing cases recognizing that picketing is privileged and beyond the power of proscription by a state court, and noting that the trial court's order does not in so many words ban picketing, "interprets" the restraint *(post facto)* to add "unreasonably" to the "unlawfully" written in the trial court's order.[17] How is a picket to gauge "unreasonable" delay? Other Texas Courts permit rail trains to block a highway for five minutes. *Deramus v. Thorton, 333 S. W. 2d 824 at 825.* Is it then "unreasonable" for a picket to delay for a few seconds?

Here, as in *Swift & Co. v. United States, 196 U. S. 375, (1905)*, "the defendants ought to be informed as accurately as the case permits what they are forbidden to do." Here, as there, a sweeping injunction to obey the law runs afoul "the first principles of justice not to sanction a decree so

---

[16]See "Through the Looking Glass" by Lewis Carroll, Heritage Press, New York, (1941), page 112:

"I don't know what you mean by 'glory'," Alice said.

Humpty Dumpty smiled contemptuously. "Of course you don't—till I tell you. I meant 'there is a nice knock down argument for you'."

"But 'glory' doesn't mean 'a nice knock down argument'." Alice objected.

"When I use a word" Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

"The question is" said Alice, "whether you can make words mean so many different things."

"The question is", said Humpty Dumpty, "which is to be master—that's all."

[17]The opinion now advises that: "any conduct by pickets * * * which *unreasonably* delayed the entrances and exits of vehicles * * * was unlawful in the sense that it was conduct which the courts would not countenance or permit." See 342 S. W. 2d 424 at 428; pp. A53, *infra*.

vague as to put the whole conduct of the defendants * * * at the peril of a summons for contempt." *196 U. S. at 401.* More recently this court has held: "A State may not issue commands to its citizens, under criminal sanctions, in language so vague and undefined as to afford no fair warning of what conduct might transgress them." *Raley v. Ohio, 360 U. S. 423, 438.* "The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited." *United States v. Cardiff, 344 U. S. 174, 176.* A person cannot be convicted of being on the wrong side of a line if the bounds fixed by the statute are too blurred to identify an ascertainable standard of conduct. *International Harvester Co. v. Kentucky, 234 U. S. 216, 221-224.* And so "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally v. General Construction Co., 269 U. S. 385, 391.*[18]

CONCLUSION

Questions as to whether picketing activity, heretofore uniformly held pre-empted to federal tribunals, (and subject both to constitutional protections guaranteeing freedom of communication and specific protection as a lawful "concerted activity" within the protection of Section 7 of the Federal Labor Management Relations Act) may be the subject of state court punishment as violative of an un-

[18] See also, *Winters v. New York*, 333 U. S. 507; *Lanzetta v. New Jersey*, 306 U. S. 451; *United States v. Cohen Grocery Co.*, 255 U. S. 81.

bounded restraint against that which is "unlawful" have been answered by the Texas courts to permit jailing of those who walk peacefully on the public way with a banner. Unless this Court reviews, serious intrusion upon petitioners' basic First and Fourteenth Amendment rights will have been accomplished. More important, unless the case is reviewed, "the workingman's means of communication" is left without protection in states where a local judiciary either does not understand, or is not sympathetic with these traditional and wholly lawful methods of industrial competition.

This case means more than fine and jail time to Pierce and Beall. It means more than giving General Electric an excuse for firing Beall. It means that the only effective method by which laborers may enlighten the public on the nature and causes of a labor dispute is gone.

Accordingly, we respectfully urge that writ of certiorari issue to review the decision of the Texas Courts.

L. N. D. WELLS, JR.,
1601 National Bankers
Life Bldg.,
Dallas 1, Texas,

BENJAMIN C. SIGAL,
1126 16th Street, N.W.,
Washington 6, D. C.,
Attorneys for Petitioners, James Pierce and Raymond J. Beall.

April 10, 1961.

Of Counsel:
MULLINAX, WELLS, MORRIS & MAUZY,
1601 National Bankers Life Bldg.
Dallas 1, Texas.

Order Granting Temporary Restraining Order & Setting Hearing on Temporary Injunction

---

No. 60-739

GENERAL ELECTRIC COMPANY

vs.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *et al.*

In the 114th Judicial District Court of Smith County, Texas

The application of GENERAL ELECTRIC COMPANY, Plaintiff for temporary restraining order upon its verified Petition, having been presented to me, Judge of the 114th Judicial District Court of Smith County, Texas, without notice to the Defendants, on this 14th day of October, 1960, and it clearly appearing from the specific facts set forth in said verified Petition that immediate and irreparable injury, loss and damage will result to Plaintiff before notice can be served upon Defendants and a hearing had on Plaintiff's application for such restraining order, unless Defendants, and each of them, is forthwith restrained as prayed for in Plaintiff's said Petition, in that Defendants, jointly, concertedly, and severally are engaging and are threatening to further engage in certain unlawful acts in that Defendants'

pickets are obstructing the free ingress and egress of vehicles into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas, and are preventing the free passage of vehicles, resulting in unreasonable delay in obtaining lawful entrance and exits therefrom; certain members of the Union are deliberately placing their vehicles upon Highway 110 directly in front of the picketed premises so as to constitute an obstacle to the free ingress and egress of said Company's premises; Defendants are threatening, coercing and intimidating occupants of vehicles entering and leaving said premises and are permitting picket signs to come in physical contact with the vehicles and are causing some destruction of personal property by inflicting damages to vehicles leaving the premises; Defendant Unions are placing more than two pickets at times within fifty (50) feet of an entrance to the Company's premises, and at times there are more than two pickets within fifty (50) feet of other pickets; the Defendants are obstructing the traffic on said Highway 110, thereby creating a menace and a clear and present danger to the health and safety of the public; Defendants are threatening violence against Plaintiff and its employees and are provoking violence on the part of the officers, agents and employees of Plaintiff and Defendants are obstructing or attempting to obstruct the free use of the streets and highway adjacent to the Plaintiff's place of business and are obstructing the free ingress and egress to and from Plaintiff's premises; certain members of the Union are harrassing and picketing the private homes and residences of

certain employees working for said Company and in furtherance thereof are causing harrassment and worry to the families of certain employees, and the Defendant Unions are causing signs such as "Strike Breaker Lives Here" to be placed at or near the private homes and residences of certain employees now working for said Company, all in violation of Article 5154f of the Revised Civil Statutes of Texas, 1926; Defendants are by telephonic communication threatening, intimidating and coercing employees now working for said Company; and Defendant Unions are by threats of force or violence are attempting to prevent the Company's employees from engaging in a lawful vocation, in violation of Article 1621b and Article 1146 of the Penal Code of the State of Texas, and the Defendants are continuing the hereinabove set out unlawful acts and are causing immediate and irreparable damage to Plaintiff and to Plaintiff's properties and Plaintiff is entitled to the restraining order as herein granted, same being within its allegations and prayer.

It is accordingly ORDERED that the Clerk of this Court issue a temporary restraining order, operative until and pending the hearing below ordered, restraining and enjoining INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, and all members thereof; LOCAL UNION 782 of the INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, and all members thereof; JAMES PIERCE, ROBERT E, WALTERS, IRVIN V. SIMS, JR., CARLOS E. MORGAN, BIRTIE JACKSON, RAYMOND J. BEALL, ROY A. WALLACE, WILLIAM

L. CHAMBERS, DONALD G. YOUNG, HERSHELL PRUITT, BOBBIE FEW AND IRBY LEE MORRIS, and all striking employees of General Electric Company Air Conditioning Department, Tyler, Texas, Defendants from:

(1) Unlawfully obstructing the free ingress and egress of vehicles and persons into and from the premises of the General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed by the Defendants.

(2) Unlawfully delaying the entrances and exists of vehicles and persons into and from the premises of said General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas.

(3) Unlawfully placing vehicles upon Highway 110 at or near the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas, so as to constitute an obstacle to the free ingress and egress of the Company's premises and preventing citizens of this State and County from entering and leaving such premises.

(4) Striking or hitting with picket signs or other objects carried by the pickets, vehicles entering and leaving the Company's premises.

(5) Unlawfully placing more than two (2) pickets at any time within fifty (50) feet of an entrance to the Company's premises or placing more than two (2) pickets within fifty (50) feet of other pickets.

(6) Threatening violence against Company and its employees and provoking violence on the part of the officers, agents and employees of Company, and from obstructing or attempting to obstruct the free use of the streets and highway adjacent to Company's place of business and obstructing the free ingress and egress to and from Company's premises.

(7) Unlawfully obstructing the traffic of Highway 110 in front of the company's premises so as to create a menace and danger to the health and safety of citizens of this State traveling upon and using said State Highway 110.

(8) Unlawfully threatening, coercing and intimidating the occupants of vehicles entering and leaving said premises of General Electric Company Air Conditioning Department aforesaid.

(9) Unlawfully harrassing and intimidating employees working for said Company by picketing or attempting to picket the homes or private residences of the working employees or in any manner unlawfully assembling at or near the homes and residences of said working employees at any time and displaying signs or placards containing language thereon indicating in any manner that the occupant or occupants of such homes and residences are "strike breakers."

(10) From threatening or coercing working employees of said Company by telephonic communication or any other manner calculated to threaten, intimidate or coerce such working employees.

(11) In any manner unlawfully interferring with the normal operation of the Company's properties and in the conduct of its business.

(12) Committing acts of destruction or in any manner damaging any of the vehicles entering or leaving the premises of General Electric Company Air Conditioning Department aforesaid.

(13) Molesting, intimidating, threatening or inflicting physical violence upon any person or persons performing services for General Electric Company Air Conditioning Department whether such services are being performed upon or off said Company's premises.

(14) From violating the right of any person or persons to engage in a lawful vocation within the meaning of Article 1621b and Article 1146 of the Penal Code of the State of Texas;

Provided that Plaintiff shall, prior to the issuance of such restraining order, file with the Clerk a bond executed by it in the sum of Five Thousand Dollars ($5,000.00) payable to Defendants, with two or more good and sufficient sureties, or surety bond, approved and conditioned as the law requires.

It is further ORDERED that Plaintiff's application for temporary injunction, effective until final decree herein, as contained in its verified Petition, be heard before me at 10:00 o'clock A. M. on the 24th day of October, 1960, in the District Courtroom in the Courthouse of Smith County, in the City of Tyler, Texas.

At Chambers this the 14th day of October, 1960, at 4:40 o'clock P. M.

/s/ Connally McKay

Judge of the 114th Judicial District Court of Smith County, Texas

Filed: October 14, 1960

Recorded: Volume 4, pages 609-612, Civil Minutes of the 114th Judicial District Court of Smith County, Texas.

Plaintiff's Affidavit for Contempt and Order Setting Date for Hearing Directed to James Pierce

---

No. 60-739

GENERAL ELECTRIC COMPANY

vs.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *et al.*

In the 114th Judicial District Court of Smith County, Texas

TOM SPROULE, agent and representative of the Plaintiff being duly sworn, says that hertofore, to wit, on the 14th day of October, 1960, a restraining order issued out of the 114th Judicial District Court of Smith County, Texas, directed to JAMES PIERCE, a Defendant in said cause, commanding him from;

"(1) Unlawfully obstructing the free ingress and egress of vehicles and persons into and from the premises of the General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed by the Defendants.

"(2) Unlawfully delaying the entrances and exits of vehicles and persons into and from the premises of said Gen-

eral Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas.

"(3) Unlawfully placing vehicles upon Highway 110 at or near the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas, so as to constitute an obstacle to the free ingress and egress of the Company's premises and preventing citizens of this State and County from entering and leaving such premises.

"(4) Striking or hitting with picket signs or other objects carried by the pickets, vehicles entering and leaving the Company's premises.

"(5) Unlawfully placing more than two (2) pickets at any time within fifty (50) feet of an entrance to the Company's premises or placing more than two (2) pickets within fifty (50) feet of other pickets.

"(6) Threatening violence against Company and its employees and provoking violence on the part of the officers, agents and employees of Company, and from obstructing or attempting to obstruct the free use of the streets and highway adjacent to Company's place of business and obstructing the free ingress and egress to and from Company's permises.

"(7) Unlawfully obstructing the traffic on Highway 110 in front of the Company's premises so as to create a menace and danger to the health and safety of citizens of this State traveling upon and using said State Highway 110.

"(8) Unlawfully threatening, coercing and intimidating the occupants of vehicles entering and leaving said premises of General Electric Company Air Conditioning Department aforesaid.

"(9) Unlawfully harrassing and intimidating employees working for said Company by picketing or attempting to picketed the homes or private residences of the working employees or in any manner unlawfully assembling at or near the homes and residences of said working employees at any time and displaying signs or placards containing language thereon indicating in any manner that the occupant or occupants of such homes and residences are "strike breakers."

"(10) From threatening or coercing working employees of said Company by telephonic communication or any other manner calculated to threaten, intimidate or coerce such working employees.

"(11) In any manner unlawfully interferring with the normal operation of the Company's properties and in the conduct of its business.

"(12) Committing acts of destruction or in any manner damaging any of the vehicles entering or leaving the premises of General Electric Company Air Conditioning Department aforesaid.

"(13) Molesting, intimidating, threatening or inflicting physical violence upon any person or persons performing services for General Electric Company Air Conditioning Department whether such services are being performed upon or off said Company's premises.

"(14) From violating the right of any person or persons to engage in a lawful vocation within the meaning of Article 1621b and Article 1146 of the Penal Code of the State of Texas;" and that said Writ was duly served on the said JAMES PIERCE on the 16th day of October, 1960; and that said JAMES PIERCE had actual notice of said Writ prior to the 17th day of October, 1960; and that said JAMES PIERCE on the 17th day of October, 1960, knowingly and wilfully and without justification or excuse, when he could and should have done otherwise, refused to obey the commands of said Writ in that:

(1) He did on October 17, 1960, unlawfully obstruct the free ingress and egress of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed;

(2) He did on October 17, 1960, unlawfully delay the entrances and exits of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas;

(3) He did on October 17, 1960, obstruct and attempt to obstruct the free use of the streets and highway adjacent to the Company's place of business and he did obstruct the free ingress and egress to and from the Company's premises;

(4) He did on October 17, 1960, unlawfully obstruct the traffic on State Highway 110 in front of the Com-

pany's premises so as to create a meance and danger to the health and safety of the citizens of this State traveling upon and using State Highway 110;
and continues such conduct, all of which the said TOM SPROULE charges constituted contempt of this Court.

WHEREFORE, the said TOM SPROULE, prays that JAMES PIERCE be held in and punished for such contempt and for such orders, processes or attachments and such proceeding as may be proper in the premises.

GENERAL ELECTRIC COMPANY

By /s/ Tom Sproule

Tom Sproule
Plaintiff

SWORN TO AND SUBSCRIBED by TOM SPROULE, agent and representative of the Plaintiff, before me, this 17th day of October, 1960, to certify which witness my hand and seal of office.

/s/ Leona Quin

(SEAL)

Notary Public in and for
Smith County, Texas

Filed: October 19, 1960.

Plaintiff's Affidavit for Contempt & Order Setting Date for Hearing Directed to Raymond J. Beall

---

No. 60-739

GENERAL ELECTRIC COMPANY

vs.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *et al.*

In the 114th Judicial District Court of Smith County, Texas

TOM SPROULE, agent and representative of the Plaintiff, being duly sworn, says that heretofore, to wit, on the 14th day of October, 1960, a restraining order issued out of the 114th Judicial District Court of Smith County, Texas, directed to RAYMOND J. BEALL, a Defendant in said cause, commanding him from:

"(1) Unlawfully obstructing the free ingress and egress of vehicles and persons into and from the premises of the General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed by the Defendants.

"(2) Unlawfully delaying the entrances and exits of vehicles and persons into and from the premises of said General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas.

"(3) Unlawfully placing vehicles upon Highway 110 at or near the premises of General Electric Company Air Con-

ditioning Department located on the Troup Highway, Smith County, Texas, so as to constitute an obstacle to the free ingress and egress of the Company's premises and preventing citizens of this State and County from entering and leaving such premises.

"(4) Striking or hitting with picket signs or other objects carried by the pickets, vehicles entering and leaving the Company's premises.

"(5) Unlawfully placing more than two (2) pickets at any time within fifty (50) feet of an entrance to the Company's premises or placing more than two (2) pickets within fifty (50) feet of other pickets.

"(6) Threatening violence against Company and its employees and provoking violence on the part of the officers, agents and employees of Company, and from obstructing or attempting to obstruct the free use of the streets and highway adjacent to Company's place of business and obstructing the free ingress and egress to and from Company's premises.

"(7) Unlawfully obstructing the traffic on Highway 110 in front of the Company's premises so as to create a menace and danger to the health and sat ty of citizens of this State traveling upon and using said State Highway 110.

"(8) Unlawfully threatening, coercing and intimidating the occupants of vehicles entering and leaving said premises of General Electric Company Air Conditioning Department aforesaid.

"(9) Unlawfully harrassing and intimidating employees working for said Company by picketing or attempting to picket the homes or private residences of the working employees or in any manner unlawfully assembling at or near the homes and residences of said working employees at any time and displaying signs or placards containing language thereon indicating in any manner that the occupant or occupants of such homes and residences are 'strike breakers.'

"(10) From threatening or coercing working employees of said Company by telephonic communication or any other manner calculated to threaten, intimidate or coerce such working employees.

"(11) In any manner unlawfully interfering with the normal operation of the Company's properties and in the conduct of its business.

"(12) Committing acts of destruction or in any manner damaging any of the vehicles entering or leaving the premises of General Electric Company Air Conditioning Department aforesaid.

"(13) Molesting, intimidating, threatening or inflicting physical violence upon any person or persons performing services for General Electric Company Air Conditioning Department whether such services are being performed upon or off said Company's premises.

"(14) From violating the right of any person or persons to engage in a lawful vocation within the meaning

of Article 1621b and Article 1146 of the Penal Code of the State of Texas;" And that said Writ was duly served on the said RAYMOND J. BEALL on the 14th day of October, 1960; and that said RAYMOND J. BEALL had actual notice of said Writ prior to the 17th day of October, 1960; and that said RAYMOND J. BEALL on the 17th day of October, 1960, knowingly and wilfully and without justification or excuse, when he could and should have done otherwise, refused to obey the commands of said Writ in that;

(1) He did on October 17, 1960, unlawfully obstruct the free ingress and egress of Vehicles and persons into and from the premises of General Electric Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed;

(2) He did on October 17, 1960, unlawfully delay the entrances and exits of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas;

(3) He did on October 17, 1960, obstruct and attempt to obstruct the free use of the streets and highway adjacent to the Company's place of business and he did obstruct the free ingress and egress to and from the Company's premises;

and continues such conduct, all of which the said TOM SPROULE charges constituted contempt of this Court.

WHEREFORE, the said TOM SPROULE prays that RAYMOND J. BEALE be held in and punished for such contempt and for such orders, processes or attachment and such proceeding as may be proper in the premises.

GENERAL ELECTRIC COMPANY

By /s/ Tom Sproule

Tom Sproule
PLAINTIFF

SWORN TO AND SUBSCRIBED by TOM SPROULE, agent and representative of the Plaintiff, before me this 19th day of October, 1960, to certify which witness my hand and seal of office.

/s/ Jimmy Lee Perry

Notary Public in and for
Smith County, Texas

(SEAL)

No. 60-739

GENERAL ELECTRIC COMPANY

vs.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *et al.*

In the 114th Judicial District Court of Smith County, Texas

ORDER

THE STATE OF TEXAS }
COUNTY OF SMITH }

AT CHAMBERS THIS 19th day of October, 1960.

The above and foregoing Affidavit, having been read and fully understood, it is ORDERED that the Clerk of this Court forthwith issue a Notice to RAYMOND J. BEALL, directing and requiring him to be and appear before the 114th Judicial District Court of Smith County, Texas, at the Courthouse of said County in the City of Tyler, Texas on the 24 day of October, 1960, at 9:00 o'clock A. M., then and there to show cause why he should not be adjudged in contempt of Court by reasons of the acts set forth in such Affidavit.

/s/ Looney E. Lindsey
Judge Presiding

Filed: October 19, 1960.

Recorded: Volume 4, page 615, Civil Minutes of the 114th Judicial District Court of Smith, County, Texas.

Response of Defendants Pierce and Beall to Notice and Affidavit for Contempt

---

No. 60-739

GENERAL ELECTRIC COMPANY

vs.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *et al.*

In the 114th Judicial District Court of Smith County, Texas

COME NOW defendants James Pierce and Raymond J. Beall and pursuant to the Notices to Show Cause why they and each of them should not be adjudged in contempt of court by reason of the allegations set out in the affidavit of Tom Sproule would respectfully show the Court that they have in no manner violated any valid order, decree or action of this Honorable Court, and as cause why they should not be punished for contempt, would show:

1.

The restraining order which defendants are alleged to have violated is void and of no effect for each of the reasons set out in the "Motion to Dissolve Temporary Restraining Order", heretofore filed, and in Defendants'

Response to Show Cause Order, this day filed, each of which documents are incorporated herein by reference as fully as if here set out in *haec verba.*

2.

This Honorable Court had no jurisdiction to issue the restraining order which these defendants are alleged to have violated, and has no jurisdiction to hold these defendants in contempt for the violation of its terms since the United States Congress has preempted this are of labor law by passing the Labor Management Relations Act of 1947, 29 U. S. C. A. §151 et seq. as amended, and has thus placed jurisdiction of cases involving activities such as that here presented in Federal tribunals pursuant to the Federal Act. In this connection, these defendants would show that the activity alleged against them

> "is arguably subject to the (Federal) Act, (and that therefore) the states * * * must defer the determination of that question in the first instance to the 'exclusive competence of the National Labor Relations Board' * * *."

Ex Parte Dilley, et al., 334 S. W. 2d 425, 430 (Tex. Sup. 1960).

3.

This Honorable Court lacks jurisdiction with respect to any alleged obstruction of a highway for the reason that exclusive jurisdiction of such matters is lodged by virtue of Article 110ff. of the Texas C.C.P. in the County Court.

4.

The restraining order which these defendants are alleged to have violated is void for the reason that as applied to the facts of this case it denies these defendants rights of free speech guaranteed by Article I, Section 8 of the Constitution of the State of Texas, and the Fourteenth Amendment to the Constitution of the United States.

5.

The restraining order which these defendants are alleged to have violated is void for the reason that it denies these defendants rights of concerted activity guaranteed by §7 of the Labor Management Relations Act of 1947, 29 U.S.C.A. 157.

6.

The restraining order which these defendants are alleged to have violated is void because it is not supported by a proper bond as required by the laws of Texas and Rule 684, Texas Rules of Civil Procedure. By Rule 684;

> "Before the issuance of a temporary restraining order * * * the applicant shall execute and file with the Clerk a bond to the adverse party, with two or more good and sufficient sureties * * *."

The bond herein is defective in at least the following particulars:

(a) It is signed only by one Sproule who is not an officer of the plaintiff corporation or otherwise shown to be authorized to execute, affix the corporate sale, and/or deliver

bonds on behalf of the plaintiff. There is no power of attorney or other competent proof of said Sproule's authority to execute such bond and thus defendants are not protected by a bond conditioned as required by the rule and thus there being no bond as a foundation for said order, said order is void; and

(b) Said bond is not signed by "two or more good and sufficient sureties * * *" as required by Rule 684. Said bond is thus not good as a bond required by the Rules of Civil Procedure because there is a failure of the legal requirement to have thereon two good and sufficient sureties. The Rules of Civil Procedure being notice to all parties concerned that at least two sureties were required in order to be a legal bond, defendants are not protected by a proper bond as required by the rules.

7.

The restraining order is void for ambiguity, lack of definiteness and clarity. An order of a court must carry with it no uncertainty and must not be susceptible of different meanings or constructions. A case of this kind is quasi criminal, and the strictness of pleading in criminal cases applies to it. *Ex Parte Ireland*, 38 Tex. 344, 356, and an injunction decree must be definite, clear and precise, should inform the defendant of the acts he is restrained from doing, without calling on him for inferences or conclusions about which persons might well differ and without leaving anything for further hearing and the aforesaid

restraining order does not properly or specifically inform these defendants of that which they are enjoined from doing. In this connection, these defendants incorporate herein by reference each of the special exceptions to the petition herein hertofore filed and would further show that said restraining order is indefinite, vague and ambiguous and calls on defendants to make interpretations, inferences and conclusions as to what actions defendants may take, and does not inform defendants what acts they are restrained from doing.

To restrain in such broad indefinite and conclusionary language deprives defendants of due process of law as guaranteed by Article I of the Constitution of the State of Texas and procedural due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

8.

The affidavit of Tom Sproule upon which the contempt proceeding is predicated is insufficient and the contempt proceeding is void for the reason that such affidavit does not allege facts which would constitute a violation of the restraining order. All that is alleged in conclusion. Defendants are entitled to know before they are put to jeopardy of fine or incarceration for contempt at least the following: what actions they and each of them are alleged to have taken, for example, what actions constituted unlawful obstruction of the free ingress and egress of vehicles, etc.,

what actions constituted unlawfully delaying the entrances and exits, what actions constituted obstruction and attempt to obstruct the free use of what streets and highways and that actions constituted obstruction; and when such actions took place, and what persons were allegedly obstructed.

In this connection, in order that defendants may be protected in their constitutional rights against double jeopardy and in order that determining may be *res judicata* defendants are entitled to a specification as to the time and place and manner in which it is sought to be alleged that defendants violated the restraining order. Each defendant excepts to the failure of the affidavit and contempt and the notice to show cause to provide adequate notice of the matters and things for which defendants are sought to be charged and for which plaintiff seeks to brand these defendants as contemnors and obtain their incarceration.

9.

Subject to the above and not waiving same, defendants would further show that defendants in good faith sought and intended to comply as best they could with the restraining order issued by this Court (which defendants admit was served upon them prior to October 17, 1960). These defendants interpreted said order to permit peaceful picketing on the public way at the point where the private driveway into plaintiff's plant intersects with State Highway 110. These defendants picketed on October 17, 1960, on the public way adjacent to the entrance of plain-

tiff's plant and across the intersection of the highway and the drive into plaintiff's plant. Neither defendant picketed across the highway. All picketing was on that part of the highway which constituted the shoulder of the highway and across the entrance to plaintiff's plant. These defendants continued walking across such entrance in an orderly and peaceful manner carrying picketsigns advertising the facts of the labor dispute. Such picketing in some instances delayed individual automobiles' ingress and egress from the plaintiff's plant as much as ten or fifteen seconds while the picket walked in front of said vehicle. Such delay is not unreasonable. Indeed, defendants have constitutional rights to picket which they exercised without intention to violate the orders of the Court, and these defendants believed that in said picketing and in all their activities that they were acting within their rights and in accordance with the orders of this Court and these defendants had no intention of violating the orders of this Court.

10.

Except as specifically admitted above, these defendants deny each and every allegation contained in the affidavit in contempt and demand strict proof thereof.

WHEREFORE, having shown cause why they should not be held in contempt, these defendants and each of them pray that the contempt charge against them be dismissed, that plaintiff's application that they be held in contempt

and punished be denied and that each of defendants be discharged from Court with their costs.

MULLINAX, WELLS, MORRIS & MAUZY,
1601 National Bankers Life Bldg.,
Dallas 1, Texas,

By /s/ L. N. D. WELLS, JR.

L. N. D. Wells, Jr.
POLLARD & POLLARD,
Tyler Bank Bldg.,
Tyler, Texas,

By /s/ TOM POLLARD, JR.

Tom Pollard, Jr.
Attorneys for Defendants.

THE STATE OF TEXAS }
COUNTY OF SMITH }

BEFORE ME, the undersigned authority in and for Smith County, Texas, on this 24th day of October, 1960, personally appeared James Pierce and Raymond J. Beall, each of whom being by me duly sworn upon his oath, states that the facts set forth in the foregoing pleading are true.

/s/ James Pierce
James Pierce

/s/ Raymond J. Beall
Raymond J. Beall

SUBSCRIBED and SWORN to before me this 24th day of October, 1960.

/s/ Thomas E. Wall
District Clerk in and for
Smith County, Texas

(SEAL)

Filed: October 24, 1960.

Order Finding Raymond J. Beall in Contempt and Committing Him to Custody of Sheriff

---

No. 60-739

GENERAL ELECTRIC COMPANY

vs.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *et al.*

In the 114th Judicial District Court of Smith County, Texas

BE IT REMEMBERED, that on the 24th day of October, 1960, came on to be heard the above entitled and numbered matter in which RAYMOND J. BEALL stands charged, pursuant to due complaint, with contempt of this Court for the violation of the Writ of Temporary Restraining Order heretofore issued in this case, restraining and enjoining the said Defendant, RAYMOND J. BEALL, and others from:

(1) Unlawfully obstructing the free ingress and egress of vehicles and persons into and from the premises of the General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed by the Defendants.

(2) Unlawfully delaying the entrances and exits of vehicles and persons into and from the premises of said General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas.

(3) Unlawfully placing vehicles upon Highway 110 at or near the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas, so as to constitute an obstacle to the free ingress and egress of the Company's premises and preventing citizens of this State and County from entering and leaving such premises.

(4) Striking or hitting with picket signs or other objects carried by the pickets, vehicles entering and leaving the Company's premises.

(5) Unlawfully placing more than two (2) pickets at any time within fifty (50) feet of an entrance to the Company's premises or placing more than two (2) pickets within fifty (50) feet of other pickets.

(6) Threatening violence against Company and its employees and provoking violence on the part of the officers, agents and employees of Company, and from obstructing or attempting to obstruct the free use of the streets and highway adjacent to Company's places of business and obstructing the free ingress and egress to and from Company's premises.

(7) Unlawfully obstructing the traffic on Highway 110 in front of the Company's premises so as to create a menace and danger to the health and safety of citizens of this State traveling upon and using said State Highway 110.

(8) Unlawfully threatening, coercing and intimidating the occupants of vehicles entering and leaving said premises of General Electric Company Air Conditioning Department aforesaid.

(9) Unlawfully harrassing and intimidating employees working for said Company by picketing or attempting to picket the homes or private residences of the working employees or in any manner unlawfully assembling at or near the homes and residences of said working employees at any time and displaying signs or placards containing language thereon indicating in any manner that the occupant or occupants of such homes and residences are "strike breakers."

(10) From threatening or coercing working employees of said Company by telephonic communication or any other manner calculated to threaten, intimidate or coerce such working employees.

(11) In any manner unlawfully interferring with the normal operation of the Company's properties and in the conduct of its business.

(12) Committing acts of destruction or in any manner damaging any of the vehicles entering or leaving the premises of General Electric Company Air Conditioning Department aforesaid.

(13) Molesting, intimidating, threatening or inflicting physical violence upon any person or persons performing services for General Electric Company Air Conditioning Department whether such services are being performed upon or off said Company's premises.

(14) From violating the right of any person or persons to engage in a lawful vocation within the meaning of Article 1621b and Article 1146 of the Penal Code of the State of Texas.

And it appearing to the Court that the said RAYMOND J. BEALL has been duly cited to appear before this Court on October 24, 1960, at 9:00 o'clock A.M., then and there to show cause why he should not be adjudged in contempt of Court by reasons of his conduct in certain respects hereinafter specified.

And it further appearing that said Defendant has filed answer and appears herein in person and by and through counsel, and the Court, having heard the same as well as the Complaint, due proof of such contempt and the evidence offered by Plaintiff, GENERAL ELECTRIC COMPANY, whereupon, the Court with consent of all counsel postponed until this the 3rd day of November, 1960, the argument of counsel, and on this date as shown below the Court heard all argument of counsel and the Court is of the opinion, and it is accordingly ORDERED, ADJUDGED and DECREED that the said RAYMOND J. BEALL is guilty of contempt of this Court by reason of committing the following described specific acts, to wit:

(1) He did on October 17, 1960, unlawfully obstruct the free ingress and egress of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises then picketed;

(2) He did on October 17, 1960, unlawfully delay the entrances and exits of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas;

(3) He did on October 17, 1960, obstruct and attempt to obstruct the free use of the streets and highway adjacent to the Company's place of business and he did obstruct the free ingress and egress to and from the Company's premises;

It is, therefore, the opinion of this Court that the Defendant, RAYMOND J. BEALL, is guilty of contempt of Court as charged and it is the judgment of this Court he is so adjudged and a punishment is hereby assessed at imprisonment in the County jail of Smith County, at Tyler, Texas, for 2 days and a Fine of $100.00; and it is ORDERED and ADJUDGED by the Court that the State of Texas do have and recover of Defendant, RAYMOND J. BEALL, the said fine of $100.00 and all costs of this proceeding, and let commitment issue to any Sheriff or any Constable within the State of Texas, reciting generally the proceedings hereon and accompanied by a certified copy of this judgment to be served upon said Defendant, RAYMOND J. BEALL, as further evidence of the said officer's authority, and further that the said RAYMOND J. BEALL pay all costs of this proceeding, for which let execution issue.

DATED, SIGNED and ENTERED at Tyler, Texas, this 3rd day of November, A. D., 1960, at 3:10 o'clock P. M.

/s/ Looney E. Lindsey
Judge Presiding

Filed: November 3, 1960

Recorded: Volume 4, Pages 623-625, Civil Minutes of the 114th Judicial District Court of Smith County, Texas.

Order Finding James Pierce in Contempt and Committing Him to Custody of Sheriff

---

No. 60-739

GENERAL ELECTRIC COMPANY

vs.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *et al.*

In the 114th Judicial District Court of Smith County, Texas

BE IT REMEMBERED, that on the 24th day of October, 1960, came on to be heard the above entitled and numbered matter in which JAMES PIERCE stands charged, pursuant to due complaint, with contempt of this Court for the violation of the Writ of Temporary Restraining Order heretofore issued in this case, restraining and enjoining the said Defendant, JAMES PIERCE, and others from:

(1) Unlawfully obstructing the free ingress and egress of vehicles and persons into and from the premises of the General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed by the Defendants.

(2) Unlawfully delaying the entrances and exits of vehicles and persons into and from the premises of said Gen-

eral Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas.

(3) Unlawfully placing vehicles upon Highway 110 at or near the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas, so as to constitute an obstacle to the free ingress and egress of the Company's premises and preventing citizens of this State and County from entering and leaving such premises.

(4) Striking or hitting with picket signs or other objects carried by the pickets, vehicles entering and leaving the Company's premises.

(5) Unlawfully placing more than two (2) pickets at any time within fifty (50) feet of an entrance to the Company's premises or placing more than two (2) pickets within fifty (50) feet of other pickets.

(6) Threatening violence against Company and its employees and provoking violence on the part of the officers, agents and employees of Company, and from obstructing or attempting to obstruct the free use of the streets and highway adjacent to Company's place of business and obstructing the free ingress and egress to and from Company's premises.

(7) Unlawfully obstructing the traffic on Highway 110 in front of the Company's premises so as to create a menace and danger to the health and safety of citizens of this State traveling upon and using said State Highway 110.

(8) Unlawfully threatening, coercing and intimidating the occupants of vehicles entering and leaving said premises

of General Electric Company Air Conditioning Department aforesaid.

(9) Unlawfully harrassing and intimidating employees working for said Company by picketing or attempting to picket the homes or private residences of the working employees or in any manner unlawfully assembling at or near the homes and residences of said working employees at any time and displaying signs or placards containing language thereon indicating in any manner that the occupant or occupants of such homes and residences are "strike breakers."

(10) From threatening or coercing working employees of said Company by telephonic communication or any other manner calculated to threaten, intimidate or coerce such working employees.

(11) In any manner unlawfully interferring with the normal operation of the Company's properties and in the conduct of its business.

(12) Committing acts of destruction or in any manner damaging any of the vehicles entering or leaving the premises of General Electric Company Air Conditioning Department aforesaid.

(13) Molesting, intimidating, threatening or inflicting physical violence upon any person or persons performing services for General Electric Company Air Conditioning Department whether such services are being performed upon or off said Company's premises.

(14) From violating the right of any person or persons to engage in a lawful vocation within the meaning of Article

1621b and Article 1146 of the Penal Code of the State of Texas.

And it appearing to the Court that the said JAMES PIERCE has been duly cited to appear before this Court on October 24, 1960, at 9:00 o'clock A. M., then and there to show cause why he should not be adjudged in contempt of Court by reasons of his conduct in certain respects hereinafter specified.

And it further appearing that said Defendant has filed answer and appears herein in person and by and through counsel, and the Court, having heard the same as well as the Complaint, due proof of such contempt and the evidence offered by Plaintiff, GENERAL ELECTRIC COMPANY, whereupon, the Court with consent of all counsel postponed until this the 3rd day of November, 1960, the argument of counsel, and on this date as shown below the Court heard all argument of counsel and the Court is of the opinion, and it is accordingly ORDERED, ADJUDGED and DECREED that the said JAMES PIERCE is guilty of contempt of this Court by reason of committing the following described specific acts, to wit:

(1) He did on October 17, 1960, unlawfully obstruct the free ingress and egress of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises then picketed;

(2) He did on October 17, 1960, unlawfully delay the entrances and exits of vehicles and persons into and from

the premises of General Electric Company Air Conditioning Department on the Troup Highway, Smith County, Texas;

(3) He did on October 17, 1960, obstruct and attempt to obstruct the free use of the streets and highway adjacent to the Company's place of business and he did obstruct the free ingress and egress to and from the Company's premises;

(4) He did on October 17, 1960, unlawfully obstruct the traffic on State Highway 110 in front of the Company's premises so as to create a menace and danger to the health and safety of the citizens of this State traveling upon and using State Highway 110.

It is, therefore, the opinion of this Court that the Defendant, JAMES PIERCE, is guilty of contempt of Court as charged and it is the judgment of this Court he is so adjudged and a punishment is hereby assessed at imprisonment in the County Jail of Smith County, at Tyler, Texas, for 3 days and a fine of $100.00; and it is ORDERED and ADJUDGED by the Court that the State of Texas do have and recover of Defendant, JAMES PIERCE, the said fine of $100.00 and all costs of this proceeding, and let commitment issue to any Sheriff or any Constable within the State of Texas, reciting generally the proceedings hereon and accompanied by a certified copy of this judgment to be served upon said Defendant, JAMES PIERCE, as further evidence of the said officer's authority, and further that the said JAMES PIERCE pay all costs of this proceeding, for which let execution issue.

DATED, SIGNED and ENTERED at Tyler, Texas, this 3rd day of November, A. D., 1960, at 3:10 o'clock P. M.

/s/ Looney E. Lindsey
Judge Presiding

Filed: November 3, 1960

Recorded: Volume 4, pages 625-627, Civil Minutes of the 114th Judicial District Court of Smith County, Texas.

A-38

No. A-8094

In the

SUPREME COURT OF TEXAS

EX PARTE PIERCE AND BEALL

PETITIONS FOR WRITS OF HABES CORPUS

FILED

IN SUPREME COURT
OF TEXAS

NOV. 3, 1960

GEO. H. TEMPLIN, Clerk
By Deputy

MULLINAX, WELLS, MORRIS & MAUZY,
By: L. N. D. WELLS, JR.,
1601 National Bankers Life Bldg.,
Dallas 1, Texas,
Attorneys for Petitioners.

No. A-8094

In the

SUPREME COU RT OF TEXAS

EX PARTE
JAMES PIERCE AND
RAYMOND J. BEALL

PETITIONS FOR WRITS OF HABES CORPUS

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF TEXAS:

NOW COME James Pierce and Raymond J. Beall, hereinafter called petitioners, and file this their original petition for writs of habeas corpus, and as grounds for said writs respectfully show the following:

1.

Each petitioner is being unlawfully confined and restrained of his liberty in the common jail of Smith County, in Smith County, Texas, by Harlon Long, Sheriff of Smith County. Said confinement and restraint are not by virtue of any lawful or legal writ, order, judgment or process. Proof of said confinement is shown by the telegram from the Sheriff of Smith County dated this date and attached hereto as Exhibit 1.

2.

Each petitioner is confined and restrained by virtue of a commitment order issued pursuant to a judgment of contempt entered by the Honorable Looney E. Lindsay, Acting Judge of the 114th District Court of Smith County, Texas, in a Civil cause styled *General Electric Company v. International Union of Electrical, Radio and Machine Workers*, AFL-CIO, ET AL, No. 60-739, which judgment of contempt was entered on November 3, 1960, and a copy of which is attached hereto as Exhibit 2.

Each petitioner was taken into custody upon the entry of the aforesaid judgment of contempt and is presently confined in the custody of the Sheriff of Smith County as aforesaid and will remain so incarcerated for a period of 3 days for Pierce and 2 days for Beall unless each petitioner is granted writ of habeas corpus here sought.

The aforesaid judgment and commitment order are void, were entered without jurisdiction and in violation of the constitutional rights of each petitioner as will be set forth in greater detail hereinbelow.

3.

On October 14, 1960, General Electric Company filed suit against the International Union of Electrical, Radio and Machine Workers, AFL-CIO, and others as per Plaintiffs' Original Petition, which is attached hereto as Exhibit 3, complaining of certain acts of picketing, all as appears more specifically from Plaintiffs' Original Petition.

An Ex parte temporary restraining order was issued on October 14, 1960. A copy is attached hereto as Exhibit 4.

Certain defendants in said cause, including the relators filed a response to show cause order asserting that the District Court lacked jurisdiction of the parties and the subject matter of the action; that the activity sought to be enjoined is protected activity under Federal and State law, and setting forth certain other defenses, all as appear in said defendants' "Response to Show Cause Order" attached hereto as Exhibit 5.

Thereafter, and notwithstanding the Temporary Restraining Order, your relators continued picketing in a peaceful and lawful manner on the shoulder of the public highway at the point where the entrance to plaintiffs' plant intersects said highway.

Thereupon, plaintiff submitted to the presiding judge which had issued the temporary Restraining Order, a pleading entitled "Affidavit of Contempt", alleging that your relators had violated the aforesaid temporary Restraining Order and seeking punishment of your relators, all as appears more fully in said pleading attached hereto as Exhibit 6.

Thereafter, the presiding judge issued an order to show cause requiring your relators to show cause why they should not be punished for contempt.

Thereafter your relators filed a "Response to Notice and Affidavit" for contempt (Exhibit 7) wherein relators asserted that the District Court lacked jurisdiction, that application of the injunction in the premises constitutes a

denial of rights of free speech as guaranteed by cited provisions of the constitution, that the injunction was void for indefiniteness and ambiguity and for violation of the requirement of Texas Rules of Civil Procedure, and that the Restraining Order was not supported by proper bond and other defenses.

Thereafter, testimony and proceedings were had before the Honorable Looney Lindsay, sitting for the Judge of the 114th District Court of Smith County, Texas, which proceedings were recorded by the official Court reporter but are not yet transcribed. Upon transcription these will be filed in this Court.

Thereafter, said Honorable Looney Lindsay found relators guilty of contempt and fined relators $100.00 each and ordered them incarcerated in the Smith County jail for 3 days for Pierce and 2 days for Beall, where they are now being held as aforesaid.

The Honorable 114th District Court had no jurisdiction to enjoin said acts of picketing and publication of said Court's orders of temporary injunction and the finding of contempt are void for the reason that jurisdiction of the parties are subject matter of said action had been preempted by the Labor Management Relations Act of 1947, as amended, (Taft-Hartley Act) and by the Labor-Management Reporting and Disclosure Act of 1959, and the exclusive jurisdiction to hear and determine same lies under such federal statutes through the administrative and judicial procedure therein provided before federal tribunals, all as appears in more detail from the pleadings,

testimony, stipulations and admissions contained in the exhibits heretofore described and attached hereto.

5.

The acts of picketing which the District Court enjoined and which the District Court found to constitute contempt were all acts of free speech privileged under and protected by Article I, Section 8 of the Constitution of the State of Texas and the First and Fourteenth Amendments to the Constitution of the United States. Relators are being denied these constitutional rights of free speech.

6.

The injunction order was void and could not properly base the contempt finding or commitment for the reasons that:

A. The injunction order did not follow the requirements of Rule 683, Texas Rules of Civil Procedure in this:

(1) It was ambiguous and contradictory and is not "specific in terms" as required by said Rule, and

(2) For the reason that by reason of its ambiguity and contradiction said injunction order requires relators to guess at their peril what acts are lawful and what are not, thus depriving your relators of that degree of definiteness and certainty which are requisite to their constitutional rights of due process of law.

B. For the reason that the Temporary Restraining Order was not supported by proper bond as required by Rule 684.

C. For the reason that the affidavit for contempt is insufficient.

7.

For the foregoing reasons, and for the reasons as set forth in defendants' response to Affidavit for Contempt, habeas corpus should be granted relators.

WHEREFORE, all of the aforesaid proceedings in Cause No. 60-739 pending in the 114th District Court of Smith County, Texas, including particularly the aforesaid temporary Restraining Order as construed by the District Court and the contempt adjudication and orders of commitment being void, and Harlon Long, the Sheriff of Smith County, Texas, under and by virtue of said void orders depriving relators of their liberty, relators pray that the Honorable Supreme Court of Texas grant and issue its writs of habeas corpus to have each petitioner brought before This Court, to the end that he may be discharged from such illegal confinement and restraint and that pending such time, the Court order the immediate release of each petitioner upon his own recognizance or upon such security as the Court may demand, which each petitioner is ready and willing to offer.

Respectfully submitted,

MULLINAX, WELLS, MORRIS & MAUZY,

By L. N. D. WELLS, JR.

L. N. D. Wells, Jr.
1601 National Bankers Life Bldg.,
Dallas 1, Texas,
Attorneys for Petitioners.

THE STATE OF TEXAS }
COUNTY OF SMITH }

BEFORE ME, the undersigned authority, on this day personally appeared L. N. D. Wells, Jr., attorney for petitioners herein, who, having been by me first duly sworn, states that he is the attorney for said petitioners and that he has knowledge of the facts contained in the above petition and that the same are true and correct.

(Signed) L. N. D. WELLS, JR.

L. N. D. Wells, Jr.

SWORN to and SUBSCRIBED this 3rd day of November, 1960.

(Signed) MRS. JEWELL SEELIGER

Notary Public in and for
Travis County, Texas

A-46

No. A-8094

In the

SUPREME COURT OF TEXAS

EX PARTE JAMES PIERCE
AND RAYMOND J. BEALL

Relators seek by writ of habeas corpus to secure relief from fines and terms of imprisonment in jail imposed on them as punishment for contempt. They were adjudged guilty of contempt for violating the terms of a restraining order issued by the District Judge of the 114th Judicial District. We ordered relators released from custody pending determination of the validity of the contempt judgment.

On October 2, 1960 General Electric Company's local plant near Tyler, known as General Electric Air Conditioning Department, was struck by its employee-members of Local Union 782 of the International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O. Pickets were posted at the entrance to the plant. On October 14th the district judge, acting in chambers and pursuant to General Electric Company's verified petition, issued an ex parte restraining order restraining the members of the national and local unions and certain named individuals, including relators Pierce and Beall, from committing some fourteen

different acts. Only numbered paragraphs (1), (2) and (7) of the order are important to our discussion inasmuch as only the acts there restrained were found in the contempt judgment to have been committed in violation of the order. Those paragraphs read as follows:

> "(1) Unlawfully obstructing the free ingress and egress of vehicles and persons into and from the premises of the General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed by the Defendants."
>
> "(2) Unlawfully delaying the entrances and exists of vehicles and persons into and from the premises of said General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas."
>
> "(7) Unlawfully obstructing the traffic on Highway 110 in front of the company's premises so as to create a menace and danger to the health and safety of citizens of this State traveling upon and using said State Highway 110."

On October 19th show cause orders were entered, pursuant to affidavit of contempt, directing relators to appear and show cause why they should not be adjudged in contempt for violating the restraining order on October 17th. Following a trial, each of the relators was adjudged to have violated the restraining order in the following respects:

> "(1) He did on October 17, 1960, unlawfully obstruct the free ingress and egress of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises then picketed;"

"(2) He did on October 17, 1960, unlawfully delay the entrances and exists of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas;"

"(3) He did on October 17, 1960, obstruct and attempt to obstruct the free use of the streets and highway adjacent to the Company's place of business and he did obstruct the free ingress and egress to and from the Company's premises;"

Relators recognize that they cannot secure relief in a habeas corpus proceeding unless the contempt judgment is void. They assert in their brief that the judgment is void because the restraining order itself is void, in that: (1). The trial court had no jurisdiction to enter it. (2). It violates constitutional rights of free speech and assembly. (3). It is too vague and general in its terms. (4). It is not supported by a proper bond.

The contention that the trial court had no jurisdiction to enter the restraining order is based upon relators's further contention that inasmuch as the employer's business is in or affects interstate commerce, jurisdiction of the subject matter of the strike and picketing is preempted to the National Labor Relations Board by certain sections of the Taft-Hartley Law. Granting that is true if the picketing prior to the entry of the restraining order had been peaceful, it is not true if the evidence before the court would support a conclusion that the order was necessary the preserve the public peace and welfare against interference with free ingress and egress of non-striking employees and others to the plant or the obstruction of travel

on the adjacent public highway. Youngdahl v. Rainfair, 355 U. S. 131, 2 L. Ed. 151, 78 S. Ct. 206; United A.A. & A.I. Workers v. Wisconsin Emp. Rel. Board, 351 U. S. 266, 100 L. Ed. 1162, 76 S. Ct. 794. In *Youngdahl* the Supreme Court of The United States upheld jurisdiction of a state court to enjoin "strikers and union representatives 'from obstructing, or attempting to obstruct the free use of the streets adjacent to [the employer's] place of business, and the free ingress and egress to and from [the employer's] property'." In *United A.A. & A.I. Workers* the Court upheld jurisdiction of the Wisconsin Employment Relations Board to enjoin the unions, their officers, members and agents from "Obstructing or interfering in any way with entrance to and egress from the premises of the Kohler Company" and from "Obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways or private drives leading to the premises of the Kohler Company." Jurisdiction of the state courts and agencies was upheld in both cases over protest that jurisdiction of the subject matter had been preempted to the NLRB by the Taft-Hartley Act.

Relators seem to argue that there was no evidentiary basis for the restraining order. Rule 680, Texas Rules of Civil Procedure, authorizes the granting of restraining orders, without notice, upon verified petition setting out facts showing that, unless granted, immediate and irreparable injury, loss, or damage will be done to the applicant. The rule contemplates that restraining orders will be granted only in cases of emergency, and that in the absence

of good cause for extension they will have life only for a necessary brief period in which notice can be given and a hearing on an application for temporary injunction can be held. Necessarily, an application for a restraining order is addressed largely to the discretion and good judgment of the trial judge. He will grant or deny an ex parte restraining order according as the need for it may appear from the verified facts contained in the petition. The only evidence before him is the verified facts in the petition. If that evidence supports the order and the court has jurisdiction of the subject matter, it must be obeyed. Disobedience of it is not justified or excused because evidence developed on a contempt hearing may disclose that the facts verified in the petition were not true.

The verified petition on which the restraining order was granted in this case contains the following allegations or statements of fact:

> "(1) Defendants' pickets are obstructing the free ingress and egress of vehicles into and from the premises of the Company by placing their persons directly in front of such vehicles and in such manner preventing the free passage of the vehicles, resulting in unreasonable delay in obtaining lawful entrance and exits therefrom.
>
> "(2) That certain members of said Unions are deliberately placing their vehicles upon said Highway 110 directly in front of the picketed premises so as to constitute an obstacle to the free ingress and egress of the Company's premises and preventing other citizens from freely entering and leaving such premises.
>
> "(5) The Defendants are obstructing the traffic on said Highway 110, thereby creating a menace and a

clear and present danger to the health and safety of the public of this State, traveling upon and using said State Highway."

While those allegations or statements of fact may not be as specific as they have been, they are not so conclusional in character as to render the restraining order void. They are the evidence upon which paragraphs (1), (2) and (7) of the restraining order was based, and they are adequate to support the jurisdiction of the court over the subject matter. Youngdahl vs. Rainfair, supra; United A.A. & A.I. Workers vs. Wisconsin Emp. Rel. Board.

What has been said disposes of the first two grounds on which relators attack the validity of the restraining order. Constitutional protection of the rights of free speech and free assembly does not license interference with and obstruction of public ways or of entrances to and exists from places of business. Ex Parte Henry, 147 Tex. 315, 215 S. W. (2) 588, is not in point on the facts and, therefore, is not controlling. The injunction in that case restrained striking employees from picketing "on, across, at or near or within 100 feet of the railroad tracks" being used to transport freight into and from the employer's plant. This court held that in so far as the judgment attempted to restrain peaceful picketing at, near, across or within 100 feet of the railway tracks, it was void. Our conclusion in that respect was based upon our holding that "So long as the pickets did not physically obstruct the spur tracks and thereby nullify or seriously impair the right of the railways to use the street, they had the same right to use the street as the railways had." Another part of the

injunction restrained picketing at or near the railway tracks "in such manner as to prevent the railway employees from serving the plant." In so far as the judgment of contempt rested upon a violation of that part of the injunction, we held it void because the evidence on the trial established that the picketing "constituted no physical obstruction to anybody going into or coming out of the plant."

The contention that the restraining order in this case was void because it was too general and vague is based upon the trial court's use of the word "unlawfully" in setting out the acts and conduct restrained. A further complaint is that the notice served on relators contained the same vice of generality. It is argued that by the wording of the order relators were left free to obstruct ingress and egress to the plant, to delay entrances and exits of persons to and from the premises, and to obstruct traffic on highway 110, so long as such conduct did not reach the stage of being unlawful, and that they had no means of determining to what extent such conduct was lawful and to what extent it was unlawful. Such generality in the notice, it is argued, was a denial of procedural due process. In support of their position relators cite Hopkins vs. Frenchy, Tex. Civ. App., 75 S.W.(2) 184.

We do not interpret the trial court's use of the word "unlawfully" as do relators. Except for the use of the word "unlawfully", the language used by the trial court in defining the conduct restrained is almost identical with that used in restraining similar conduct in *Youngdahl* and *United A.A. & A.I. Workers.* Any conduct by pickets which

obstructed "the free ingress and egress of vehicles and persons into and from the premises", or which unreasonably delayed "the entrances and exits of vehicles and persons into and from the premises", or which obstructed "the traffic on Highway 110 so as to create a menace and danger to the health and safety of the citizens", was unlawful in the sense that it was conduct which the courts would not countenance or permit. We interpret the trial court's use of the word "unlawfully" as indicating that the conduct restrained was regarded by the court as being unlawful. The order condemned in Hopkins vs. Frenchy restrained police of the City of San Antonio from "unlawfully" interfering with the plaintiffs' "lawful" operation of their restaurant and soft drink business. The orders are obviously not the same.

Relators' claim that the restraining order bond was void is based on the fact that the evidence does not show formal authority of the agent who executed the bond on behalf of the principal. The bond was executed on behalf of General Electric Company by Tom Sproule, general manager of the plant at Tyler. He testified that he was authorized to execute the bond by legal counsel for the principal. Absence of more formal authority does not invalidate the bond.

Although no such point is contained in their brief, relators seem to argue there, as they undoubtedly did in oral argument, that there was no evidence adduced at their trial supporting the judgment of contempt. Our only right to review the evidence is for the purpose of determining whether relators have been deprived of their liberty with-

out due process of law. If there is in the record evidence from which the trial court could conclude that they violated the restraining order, they have not been denied due process. Ex Parte Helms, 152 Tex. 480, 259 S.W. (2) 184, 186; Ex Parte Morris, 147 Tex. 140, 215 S.W. (2) 598. There is ample evidence to support the trial court's conclusion. We will content ourselves with a brief summary of it.

General Electric's plant is located just North of Highway 110 which connects Tyler, situated some four or five miles West of the plant, with Troup, some eleven or twelve miles East of the plant. A private roadway leads from Highway 110 to the main entrance to the plant. Employees and others traveling East from Tyler and wishing to enter the plant premises had to make a left turn from the South traffic lane across the North traffic lane to enter the private road. Union pickets stationed themselves just inside the North right-of-way of Highway 110, one to the East and one to the West of the private road entrance, and walked back and forth across the entrance, passing each other near the center of the entrance. Relator Pierce was on picket duty during early morning hours when non-striking employees were arriving for work. Relator Beall was on picket duty in the afternoon when non-striking employees were leaving the plant.

There is testimony that the pace of Pierce and the other morning picket was so slow and deliberate as to back up some 25 or 30 automobiles approaching from Tyler and intending to enter the plant premises; that the interval

between the crossing of the pickets and their return was so brief that only one automobile could pass; that highway patrolmen were forced to hold up traffic traveling in a westerly direction to permit turning of the slow moving traffic across the North lane of the highway and into the plant entrance; that "the traffic coming from Tyler was blocked considerably"; that there was a similar slow-down of automobiles leaving the plant at the end of the work day; that "the vehicles were held up repeatedly, both before and after 8:00 A.M."

With reference to the particular conduct of relators on October 17th: "Mr. Beall and Mr. Pierce walked the picket line in a very erratic manner, to my way of thinking, slowing at times, holding up traffic as a consequence. Going through certain gyrations. * * * Mr. Beall seemed to be having leg trouble at times. He would reach down and rub his leg and then look over at the audience across the street and there would be applause more or less from there. * * He was in front of automobiles that were being held up, trying to leave in the afternoon—leave the plant. * * Mr. Beall had leg trouble. At occasional intervals he would stop and hold his leg and raise it and knead the muscles; and he also had some extremely short walking right in front of cars, stopped, turned back a couple of paces, stopped again, stop—back and forth repeatedly. * * * Mr. Pierce also went through actions that were quite interesting. Everyone seemed to be watching them because of the fact that they

did have these troubles in walking picket line. * * * Mr. Pierce, he also held up traffic. At one time, dropping his sign, as I recall it, right in front of the vehicles, reaching over slowly and picking it up; and also indicating it hurt his back, and holding over like this, and again to the cheers from across the street—traffic being held up all this time. * * And Mr. Pierce, as I recited I believe earlier, dropped his sign at one time and seized his side as though he had been injured, or had pulled a muscle or something like that, and stopped the traffic at that time. * * They were among our slowest pickets, Judge."

A newspaper reported attended an early morning rally of striking employees on the morning of the 17th. At the rally he saw Pierce hold up what he identified as the restraining order and heard him refer to it as "a piece of trash." He also heard Pierce state at the rally that the district judge who issued the restraining order "had been bought and paid for by General Electric."

The restraining order had been granted by the regular judge of the 114th Judicial District. The contempt trial was conducted by a visiting judge. Relators could not be punished for what was said at the rally because they were not cited for contempt on that ground, but the trial judge had the right to consider what was said by Pierce at the rally as shedding light on the conduct of relators in the picket line—whether the injured leg and the strained back were simulated or real, and whether the deliberate pace of the pickets was the product of a contemptuous attitude.

Relators are remanded to the custody of the Sheriff of Smith County until released according to the terms of the judgment of contempt.

(Signed) ROBERT W. CALVERT

Robert W. Calvert,
Chief Justice.

RWC:bds.

Associate Judge Steakley not sitting.

Opinion delivered:

January 11, 1961.

A-58

In the

SUPREME COURT OF TEXAS

No. A-8094

EX PARTE

JAMES PIERCE AND RAYMOND J. BEALL

ORIGINAL HABEAS CORPUS

January 11, 1961.

This cause came on to be heard on petition for writ of habeas corpus filed herein on November 3, 1960, and the same, together with the record and briefs and argument of counsel having been duly considered, because it is the opinion of the Court (Associate Justice Steakley not sitting) that the judgments of contempt entered in Cause No. 60-739, General Electric Company vs. International Union of Electrical, Radio and Machine Workers, AFL-CIO, et al., in th 114th District Court of Smith County, Texas, by Looney E. Lindsey, Judge Presiding, on November 3, 1960, were valid judgments, and that the writs of commitment issued in pursuance thereof, on the same date, were valid writs, it is therefore *adjudged*, *ordered* and *decreed* that the order entered in the minutes of this Court on November 3, 1960,

granting writ of habeas corpus, be, and hereby is, set aside, and that relators, James Pierce and Raymond J. Beall, be, and hereby are, remanded to the custody of the Sheriff of Smith County, Texas, to be held and confined in accordance with the terms of the aforesaid judgments of contempt and writs of commitment issued in pursuance thereof.

It is further ordered that relators, James Pierce and Raymond J. Beall, and the sureties on their respective appearance bonds, Thomas G. Pollard, Jr., and M. G. Harmon, pay all costs in this cause expended and incurred in this Court, and that the Clerk of this Court issue the necessary writ, or writs, re-committing relators to the custody of the Sheriff of Smith County, Texas, as above provided.

* * * * *

A-60

MOTION FOR REHEARING CAUSE

No. A-8094

In the

SUPREME COURT OF TEXAS

EX PARTE

JAMES PIERCE AND RAYMOND J. BEALL

RELATORS' MOTION FOR REHEARING AND ARGUMENT IN SUPPORT OF MOTION FOR REHEARING

MULLINAX, WELLS, MORRIS & MAUZY,
By: L. N. D. WELLS, JR.,
1601 National Bankers Life Bldg.,
Dallas 1, Texas,
Attorneys for Relators.

FILED
In Supreme Court
Of Texas
Jan. 25, 1961
GEO. H. TEMPLIN, Clerk
By Deputy

A-61

No. A-8094

In the

SUPREME COURT OF TEXAS

EX PARTE

JAMES PIERCE AND RAYMOND J. BEALL

RELATORS' MOTION FOR REHEARING AND ARGUMENT IN SUPPORT OF MOTION FOR REHEARING

MOTION FOR REHEARING

JAMES PIERCE and RAYMOND J. BEALL (herein called Relators) move the Court to rehear, reconsider and withdraw its Opinion and judgment rendered January 11, 1961, denying relators' writs of habeas corpus, and remanding them to the custody of the Sheriff of Smith County; and pray that upon rehearing they be granted writs of habeas corpus and discharged from custody, and as cause therefore would show:

1.

The Court erred in its statements of relators' contentions.

2.

The Court erred in deciding a federal question (whether federal legislation pre-empted the power of a state court to jail a laborer for engaging in peaceful picketing which delayed ingress to an industrial plant manufacturing goods for interstate commerce) in a way in conflict with applicable decisions of the Supreme Court of the United States, notably *Youngdahl v. Rainfair*, 355 U. S. 131.

3.

The Court erred in deciding a federal question (whether laborers are denied rights of publication guaranteed by the First Amendment to the Constitution by being jailed for peaceful picketing at a slow and deliberate pace with banners truthfully proclaiming the existence of a strike, which picketing had the effect of delaying the entrance of 25 or 30 automobiles entering the plant of an employer with whom the pickets were in dispute) in a way in conflict with applicable decisions of the Supreme Court of the United States, notably *Thornhill v. Alabama*, 310 U. S. 88; *Cafeteria Employees v. Angelos*, 320 U. S. 293; *Chauffeurs etc. Union v. Newell, d/b/a Eldorado Dairy*, 356 U. S. 341.

4.

The Court erred in deciding a question of federal constitutional law (whether the jailing of workers on charges of "unlawfully delaying * * *" and "unlawfully obstructing * * *" and the finding of "unlawfully delaying * * *" and "unlawfully obstructing * * * " and thus violation of an in-

junction which forbade "unlawfully delaying * * *" and "unlawfully obstructing * * *" constitutes such vagueness, generality and lack of specification as to amount to denial of procedural due process in violation of the Fifth, Sixth and Fourteenth Amendments) in a way in conflict with applicable decisions of the Supreme Court of the United States, notably *Raley v. Ohio*, 360 U. S. 423, 438; *United States v. Cardiff*, 344 U. S. 174, 176; *International Harvester v. Kentucky*, 234 U. S. 216, 221-224; *Connally v. General Construction Co.*, 269 U. S. 385, 391; *Winters v. New York*, 333 U. S. 507; *Lanzetta v. New Jersey*, 306 U. S. 454.

5.

The Court erred in holding that there were findings and evidence sufficient to support the Contempt Judgment.

WHEREFORE, relators pray for rehearing, for further oral argument before this Honorable Court, and upon rehearing, for issuance of writs of habeas corpus discharging relators.

Respectfully submitted,

MULLINAX, WELLS, MORRIS & MAUZY,

By: L. N. D. WELLS, JR.,

1601 National Bankers Life Bldg.,
Dallas 1, Texas,
Attorneys for Relators.

In the

SUPREME COURT OF TEXAS

No. A-8094

EX PARTE

JAMES PIERCE AND RAYMOND BEALL

ORIGINAL HABEAS CORPUS

Motion of relators, James Pierce and Raymond J. Beall, for rehearing, filed in the above and entitled cause on January 25, 1961, having been duly considered by the Court, it is ordered that said motion be, and hereby is, overruled.